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In a recent issue of the CENTRAL LAW JOURNAL (53 Cent. L. J. 281), we stated our opinion that the celebrated case of French v. Paving Co., 181 U. S. 324, 19 Sup. Ct. Rep. 187, had not settled the controversy over the validity of arbitrary assessments for street improvements which do not take into consideration benefits received. Our position was then, and is now, that the supreme court, in overruling the case of Norwood v. Baker, disregarded every principle of sound law and reason and adopted a rule not only exceedingly unjust, but having no other support in reason or authority than the fiat of the court. A striking illustration of the truth and force of our criticism in this regard is given in a recent issue of *Case and Comment*, where it is reported that a lot in the City of Rochester, actually valued by the tax assessors at only fifty dollars, is assessed for a street improvement more than six thousand dollars. Our esteemed contemporary shares our opinion on this question in very forcible language: "The arbitrary frontage rule has not even a pretense of justice except on the assumption that each abutting lot must necessarily be benefited to an amount equal to its share of the total cost of the work as apportioned by frontage. The assumption is not only baseless but demonstrably and concededly false, yet, under the doctrine which for the present is adopted by the Supreme Court of the United States, assessments made on this palpably false assumption, and leading to such grotesquely unjust results as the Rochester assessment, are held constitutional."

Much discussion, relevant and otherwise, has filled the pages of law and secular publications over the recent decision of the Supreme Court of Illinois in the case of State Board of Equalization v. People, 61 N. E. Rep. 339. This case originated in a petition filed by a committee of the Teachers' Federation of Chicago, praying for a writ of *mandamus* against the state board of equalization to coerce said board forthwith to value and assess the capital stock and franchise of certain street railroads and other *quasi*-public corporations of the city of Chicago. The only general question of law presented to the court for determination was, not whether the court had power to review the judgment of the state board of equalization in the fixing of values upon property assessed by it, but whether, when property has been wrongfully omitted which is taxable or fraudulently assessed at so low a rate as to amount, in law, to no assessment at all, the court may compel said board to perform its duty by assessing such property. And the court held further that under the constitution and laws of Illinois the state board of equalization, in assessing the capital stock and franchises of corporations, does not act as a board of review, but as an original assessor; and the duty resting upon said board to value and assess the fair cash value of the capital stock, including the franchise, over and above the assessed value of the tangible property of all companies and associations now or hereafter created under the laws of this state, is mandatory, and the performance of such duty, when omitted or evaded, may be enforced by *mandamus*.

One of the interesting phases of this litigation was the public spirit and grit evidenced by the school teachers of Chicago, when informed that in spite of the apparently heavy assessments there was no money to meet an increased salary schedule, or even to pay for the regular school facilities. In their investigation they found that every other branch of the public service was in the same unfortunate and disgraceful condition. Approaching the difficulty, toward a solution of which they had committed themselves, as a "condition and not a theory," they discovered that the lack o revenue was due to the fact that one-sixth of the assessable property of the city was not assessed. This property included the intangible property or franchises of *quasi*-public corporations, such as gas, electric light, telephone and traction companies. In October, 1900, the teachers came before the board of equalization with the result of their investigation and demanded the assessment of corporate

franchises in the city of Chicago. The board, secure in the belief that they were a purely discretionary body not to be controlled or interfered with by a company of petticoats from the public schools of Chicago, contemptuously ignored their demand. They calculated very ignorantly, however, the extent of a woman's persistence when she knows she is right.

While the questions of law decided in this case have nothing of novelty about them, the practical results will be incalculable, not only in that state but in every state in the union, especially as serving to arouse public opinion to the point of compelling large corporations holding valuable franchises to stand their legitimate share of the public burdens. In Chicago the fair market value of public franchises held by private corporation, for which in most cases they paid nothing but a small rental, was $235,000,000, all of which for a number of years was burdened with not a penny of taxation. Under the order of the court in this case all these back taxes can be recovered, which, together with the assessment for the current fiscal year, will undoubtedly enable the city of Chicago to pay its current expenses and to carry out its laudable attempt to increase the pay of that noble company of public school teachers who have, by a most commendable public spirit, enforced so successfully the rights of the city.

NOTES OF IMPORTANT DECISIONS.

CRIMINAL TRIAL—UNFAIR MEANS OF PROSECUTIONS AND ARGUMENTS OF COUNSEL.—The state, as accuser in a criminal proceeding, does not seek one of its citizens convicted unless the evidence shows his guilt beyond a reasonable doubt; nor will it permit its prosecuting officer to use any unfair means in the trial, or illegal argument in his address to the jury, to the prejudice of the accused. Where, therefore, a solicitor general, in his address to the jury, uses highly improper language, not authorized by the evidence, or any fair deduction therefrom, and the counsel for the accused objects thereto, and moves the court to declare a mistrial, which the court refuses, and exception is taken to the ruling, the appellate court will reverse the judgment, and grant a new trial, in the interest of justice, and of fair and impartial trials. Such was the decision in the recent case of Ivey v. State (Ga.), 39 S. E. Rep. 423. The court said in support of its position: "Even in cases where this court has refused to grant a new trial on this ground because of the failure to invoke a ruling in the court below, and make the point properly, it has almost invariably condemned the practice of commenting on facts not in evidence, and making improper remarks to the jury. In the present case the solicitor made statements to the jury which were highly improper, the court failed to rebuke him, or to charge the jury with reference to the matter, and refused to grant a mistrial when asked so to do by counsel for the accused. Under these circumstances, we feel constrained to grant a new trial upon this ground."

EXEMPTIONS—DIVORCED MAN MAY BE HEAD OF FAMILY.—A peculiar working of the exemption laws arose recently in the case of Maag v. Williams (Mo. App.), decided at St. Louis, Nov. 19, 1901, but not yet reported. It appeared from the facts in this case that John Maag married in 1895, of which marriage a son was born. Subsequently his wife obtained a divorce with custody of the one child and judgment for alimony. Afterward Maag remarried and had another child. The second wife sued him for divorce and got custody of her child, with judgment of twenty dollars per month alimony. Maag failed to pay this last judgment and the second wife garnished his employer. Defendant, though unmarried, was under legal obligation to support the child of the first marriage. The trial court found that defendant was the head of a family by reason of liability to support the first child, but that he could not claim his wages as exempt against plaintiff's judgment for the support of the second child. The St. Louis Court of Appeals, in reversing judgment, says:

"This case is distinguishable from Shengler v. Kaufman, in 46 Mo. App. 644. The allowance of twenty dollars per month for the support of the child is by the terms of the judgment made payable to the mother. The mother being divorced from her husband, is no longer a member of his family, and the custody of the child being awarded to the mother, the child is no longer under his supervision or control, and hence not a member of his family. The judgment for its support is like any other judgment. The court cites in support of its decision Biffle v. Pullan, 114 Mo. 50."

ANIMALS—SHOOTING LIVE PIGEONS FOR SPORT AS CRUELTY TO ANIMALS.—To those who think the world is rapidly growing worse and that men's feelings are becoming hardened, we would refer to the agitation in the present New York legislature over a bill to prevent what is called the "barbarous" sport of "trap-shooting." Hon. George T. Angell, editor of Our Dumb Animals, in commenting on this bill, incidentally gives us some inside chapters to the passage and enforcement of similar legislation in Massachusetts. He says: "Many years ago we asked our Massachusetts legislature to enact such a law. It was opposed by a large number of wealthy pigeon-shooters. Some fifty of them appeared

at the hearings and employed three prominent lawyers to fight us. We succeeded in passing it through the house of representatives. In the senate they made their hardest fight [it being, I think, the longest hearing that the senate judiciary committee had in the whole winter]. In the course of our final argument we thought it our duty to say 'that these gentlemen had in their barbarous sport placed themselves on the same level with another class who, if they could get possession of our commonwealth, would make real estate of no more value in Boston than it was in Sodom.' We are glad to say that in spite of all the efforts of those wealthy gentlemen and their three distinguished lawyers, and a majority report of the judiciary senate committee against us, we succeeded in having the law enacted by a large majority—and we enforced it—and from that day to this we have never heard of a live pigeon being shot from a trap for sport in Massachusetts."

FRAUDULENT CONVEYANCES—EFFECT OF NOTICE OF FRAUDULENT INTENT UPON PURCHASER BEFORE ENTIRE PURCHASE PRICE HAS BEEN PAID.—A decision of great interest to commercial lawyers and credit men is that of McFadyen v. Masters, 66 Pac. Rep. 284. One remarkable feature of the case is that of a former opinion was unanimously reversed on rehearing. In this case the Supreme Court of Oklahoma holds that where a party purchases from an insolvent and failing merchant a stock of goods, and the merchant makes such sale with intent to hinder or delay his creditors, and the purchaser thereof has no actual or constructive notice of the fraud at the time of the purchase, but subsequently, and before the payment of all the consideration of his purchase, has notice thereof, he can only be protected to the extent of the money actually paid, or the security or property actually appropriated by way of payment, before notice. If notice of the fraud is after payment of part of the purchase money, the purchaser is only entitled to indemnity or reimbursement for the money paid or the security or property actually appropriated by the seller as payment. He is not to be regarded as a purchaser for a valuable consideration as to the purchase money unpaid. A case very similar to the principal case was recently decided by the Supreme Court of Nebraska. Hendrick v. Strauss, 60 N. W. Rep. 928. It was there held that, in order to constitute one an innocent purchaser of property sold for the purpose of defrauding, the creditors must be actually paid before the purchaser had notice of the fraudulent intent. The court said: "If, after part of the consideration has been paid, the purchaser receives notice of the fraud, he will only be entitled to protection to the extent of the consideration paid or parted with before notice. As to the purchase price not paid, such vendee will not be regarded as an innocent purchaser of the property." To same effect: Bush v. Collins, 35 Kan. 535, 11 Pac. Rep. 425; Tillman v. Heller (Tex.), 14 S. W. Rep. 700, 22 Am. St. Rep. 77; Dougherty v. Cooper, 77 Mo. 528; Massie v. Enyart, 32 Ark. 251; Burnham v. Dillon, 100 Mich. 352, 59 N. W. Rep. 176.

RECENT IMPORTANT BANKRUPTCY DECISIONS.—A transfer of property by the bankrupt before the passage of the Bankruptcy Act, and claimed to be void as against his trustee, because fraudulent as to creditors, is a proper subject of investigation upon an application for a discharge. *In re* Gaylord, 7 Am. B. R. 2. * * * Where a third party's claim of title to property that has been seized by a marshal as part of a bankrupt's estate depends upon a decision of contested issues of fact, or disputable questions of law, the claimant's right to the property will not be adjudged upon a mere motion, but the district court may make an order requiring the controversy to be determined by a plenary action. *In re* Young, 7 Am. B. R. 14. * * * In a State where the title to mortgaged realty remains in the mortgagor, who is adjudged a bankrupt prior to the entry of a decree in foreclosure, his trustee succeeds to the interest of the bankrupt in said property, including the statutory right of redemption from the sale. *In re* Novak, 7 Am. B. R. 27. * * * In Massachusetts, a wife's claim for money advanced to her husband from her separate estate as a loan, cannot be enforced by either legal or equitable proceedings, and so cannot be proved against the husband's estate in bankruptcy. *In re* Talbot, 7 Am. B. R. 29. * * * Where the consideration of a chattel mortgage executed when the bankrupt was insolvent and within four months of adjudication, consists in part of an antecedent loan, and to that extent voidable as a preference, the mortgage in that respect cannot be deemed a valid lien, because at the time the loan was agreed to be made, the bankrupt verbally promised to give the mortgage particularly, where by the state law if executed when the loan was made, but not recorded until in fact executed, it would have been invalid as against creditors. *In re* Ronk, 7 Am. B. R. 31. * * * After an adjudication of bankruptcy, the referee has original jurisdiction to entertain a creditor's petition to dismiss the proceedings upon the ground that the bankrupt was not at the time of the filing of his petition a resident of the district. *In re* Scott, 7 Am. B. R. 35. * * * Unless the bankrupt has committed some one of the offenses described in section 14, the court must discharge him, although the only liability scheduled, and the only claimed proved, is a judgment recovered against him for loss of services occasioned by his seduction of plaintiff's daughter. *In re* McCarthy, 7 Am. B. R. 40. * * * An assignee under a general assignment which was itself an act of bankruptcy is a party to the wrongful act, and cannot be allowed any sum for services in preserving the estate, but his actual and neces-

sary expenses incurred in that behalf during the time the assigned property was in his possession will be allowed. *In re* Tatem, Mann & Co., 7 Am. B. R. 52. * * * An assignee under a general assignment is not entitled, before paying over to the trustee the proceeds of the sale of the assigned property, to deduct any sum as compensation for services rendered prior to the filing of the assignor's petition in bankruptcy. Wilbur v. Watson, 7 Am. B. R. 54.

TELEGRAPHS AND TELEPHONES — RIGHT OF TELEPHONE COMPANY TO CHARGE FOR THEIR SERVICE AT A RATE HIGHER THAN THAT PRESCRIBED BY ORDINANCE.—Judge Tuley of Chicago has just granted a preliminary injunction restraining the Chicago Telephone Company from charging more than the franchise rate of $125 a year for its business service. The Chicago Telephone Company, according to the opinion of Judge Tuley, is a public service corporation, amenable to the ordinances passed by the city to regulate its streets, and had no right to charge a greater price than that fixed by the ordinance. In referring to the ordinance of 1899, Judge Tuley says in his opinion: "Not being a private contract, or a contract separate and apart from the exercise of the governing power of the city, the doctrine of practical construction and acquiescence contended for by the defendant can have no application, because as a public service corporation it was bound to give telephonic service at the rate fixed by the ordinance. When a subscriber cannot obtain satisfactory service except by entering into a contract by which he agrees to pay a greater rate than that fixed by the ordinance, the rate agreed to be paid, so far as it is in excess of the rate prescribed by the ordinance, must be held to be an illegal exaction, and not only illegal, but forced—a forced agreement by the company exacted of the subscriber, and not a voluntary contract, which would estop him from disputing the same. In the language of the supreme court, 'where a public service corporation exacts greater charges than are authorized by law, the payment of such charges is not regarded as voluntary, nor is the making of any protest or objection necessary in order to recover back the excessive charges.'" Of course, the general proposition that the state in the exercise of the police power may fix and regulate the maximum rate of charge for telephone service has been well settled in the affirmative. Central Union Telephone Co. v. State, 118 Ind. 194, 10 Am. St. Rep. 114; St. Louis v. Bell Telephone Co., 96 Mo. 623. A number of schemes have been tried by telephone companies to avoid these charges, but to no avail. Thus, they have endeavored to exceed the maximum rate by dividing the charge into two items, one termed a rental and the other as a charge for use of instrument by non-subscriber (Johnson v. Dostal, 113 Ind. 143), or in another way, by attempting to charge per single conversation instead of regular rental. Central Union Telephone Co. v. State, 118 Ind. 194. All these evasions were promptly exposed and checked by the courts. This decision of Judge Tuley adds another to the list.

DEPOSITIONS—RIGHT OF PARTY TO READ ONLY A SELECTED PART OF DEPOSITION OF HIS OWN WITNESS.—The recent case of Bank v. Finnell, 65 Pac. Rep. 976, gave an interesting review of the authorities on the question as stated in the subject of this note. In this case the Supreme Court of California held that it was not permissible for a party to introduce in evidence selected portions of the deposition of his own witness, and omit the rest, citing the following authorities: Kilbourne v. Jennings, 40 Iowa, 473; Grant v. Pendery, 15 Kan. 236; Hill v. Sturgeon, 28 Mo. 323; Thomas v. Miller, 151 Pa. St. 482, 25 Atl. Rep. 127; Lanahan v. Lawton, 50 N. J. Eq. 276; State v. Rayburn, 31 Mo. App. 385. The court reviewed the authorities as follows: "In this state the only authority for the use of depositions is in the provisions of the Code, which provide that 'the deposition' may be used (Code Civ. Proc. §§ 2028, 2032, 2034); but it is not said that portions of them can be used, nor can it be inferred that such was the intention. It is, indeed, said in the American and British Encyclopædia of Law, in a passage cited by respondent's counsel (volume 9, p. 365), that 'the party offering a deposition in evidence is not, as a rule, bound to offer or read the whole of it;' but (with one exception) we find no support for the proposition in the authorities cited. Of these some have apparently no bearing on the proposition. Edgar v. McArn, 22 Ala. 796; Smith v. Crocker, 3 App. Div. 471, 38 N. Y. Supp. 268; Gellatly v. Lowery, 6 Bosw. 113; Williams v. Kelsey, 6 Ga. 365; McArdle v. Bullock, 45 Ga. 89,—the court in the case last cited saying: 'If the practice of the court permits the party bringing them in [referring to the interrogatories] to read * * * only the direct answers, it is a new practice to us.' Other cases hold that parts of a deposition may be used, in certain cases, as declarations of the party testifying (Code Civ. Proc. § 1870, subd. 1; Van Horn v. Smith, 59 Iowa, 142, 12 N. W. Rep. 789, distinguishing Kilbourne v. Jennings, 40 Iowa, 473. And see, also, Bank v. Rhutasel, 67 Iowa, 319, 25 N. W. Rep. 261), or as declarations of a witness to contradict him (Webster v. Calden, 55 Me. 165; Whitman v. Morey, 63 N. H. 448, 2 Atl. Rep. 899); and others that a party may read the whole or part of a deposition taken on behalf of his adversary (Converse v. Meyer, 14 Neb. 190, 15 N. W. Rep. 340; Hammat v. Emerson, 27 Me. 308, 46 Am. Dec. 598; Byers v. Orensstein, 42 Minn. 386, 44 N. W. Rep. 129; Watson v. Race, 46 Mo. App. 552), the decision being based, apparently, on the principle laid down in Van Horn v. Smith, 59 Iowa, 141, 12 N. W. Rep. 789. The excepted case referred to is Bunzel v. Maas, 116 Ala. 79, 22 South. Rep. 568, where the plaintiff was allowed to offer in evidence the examination in chief of

a witness examined by deposition in his behalf; the court citing in support of the ruling the following cases: Van Horn v. Smith, 59 Iowa, 142, 12 N. W. Rep. 789; Converse v. Meyer, 14 Neb. 190, 15 N. W. Rep. 340; Gellatly v. Lowery, 6 Bosw. 113; Bank v. Rhutasel, 67 Iowa, 316, 25 N. W. Rep. 261; Herring v. Skaggs, 73 Ala. 446. But none of these decisions seem to support the position of the court. In the case last cited the deposition from which the plaintiff was permitted to read was the deposition of the defendant, and in Bank v. Rhutasel the deposition of a witness taken by the opposite party. The other cases are among those already commented on. It will be observed that the exceptional case does not go so far as to hold that the plaintiff could dispense with any part of the direct examination, as was held in this case."

ACCORD AND SATISFACTION — PAYMENT BY STRANGER AS A COMPLETE SATISFACTION.— What is the effect of an accord and satisfaction entered into, not with the person against whom a claim is asserted, but with a third person? This is one of those disputed questions of law on which legal controversialists have delighted to expatiate. It arose in a very practical form in the recent case of Jackson v. Pennsylvania R. R., 49 Atl. Rep. 730, in which the Supreme Court of New Jersey held that an accord between the plaintiff and a third person as to the subject-matter of suit, and a satisfaction moving from such third person to the plaintiff, who accepts and retains it, are available in bar of the action if the defendant has either authorized or ratified the settlement. This statement of the rule by the court is undoubtedly supported by the weight of authority. In this case the plaintiff, the driver of an express company's wagon, was injured by the defendant railroad company's negligence. The express company consented to employ him a few months longer after the injury, although he was incapable of work, and to pay him full wages if he would sign an agreement stating such payment to him to be in "full satisfaction and discharge of all claims accrued or to accrue in respect of all injuries, direct or indirect," arising from the particular accident complained of. It also appeared that between the railroad and the express company there was an agreement by which the latter was to indemnify the former for all injuries to the latter's employees. The court held that the fact that the express company is the indemnitor of the railroad company made its contract of release and satisfaction with the plaintiff one "for the defendant and on his account."

The first and leading case on this question was that of Grymes v. Blofield, Cro. Eliz. 541, where defendant pleaded in an action for debt that complete satisfaction had been made by a stranger for that very debt. The court held that such stranger was "in no sort privy to the condition of the obligation, and, therefore, satisfaction given by him is not good." This decision has been much discussed and controverted in England with the result that the following compromise has been reached as the law in that country: First, that a satisfaction from a stranger, without the authority, prior or subsequent, of the defendant is bad. Second, that a payment by a stranger, considered to be for the defendant, and on his account, and subsequently ratified by him, is a good payment. Belshaw v. Bush, 11 C. B. 191; James v. Isaacs, 22 Law J. C. P. 73. In this country, while there has been some tendency to follow strictly the original authority of Grymes v. Blofield (see Daniels v. Hallenbach, 19 Wend. 408; Dock Co. v. Leavitt, 54 N. Y. 64; Armstrong v. School District, 28 Mo. App. 169), the tendency has been strongly in favor in departing from the severe strictness of the rule there announced, at least to the extent to which the latest English authorities had gone. Leavitt v. Morrow, 6 Ohio St. 72; Snyder v. Pharo, 25 Fed. Rep. 398. In the latter case the court succinctly states the rule supported by the weight of American authority to be as follows: "Satisfaction of a debt by the hands of a stranger is good when made by the authority of, or subsequently ratified by, the defendant. The fact of pleading it will be sufficient evidence of ratification."

DIVORCE — UNCORROBORATED CONFESSIONS OF ADULTERY AS GROUND FOR DIVORCE. —It has been generally supposed that the reason of the rule that a divorce will not be granted on uncorroborated confessions of adultery was the fact that they would too generally be the result of coercive influences or collusive intentions, and that if freedom from such influences or intentions were proven, such evidence would have sufficient probative force without direct corroboration. Billings v. Billings, 11 Pick. 461; 2 Bish. Mar. & Div. §§ 244, 245. But in the recent case of Kloman v. Kloman, 49 Atl. Rep. 810, the Supreme Court of New Jersey holds that a divorce will not be granted on the uncorroborated confessions of adultery by the defendant, even though such confessions are non-collusive. It may be admitted that in a large number of authorities the broad statement has been made that no divorce will be granted on the mere confessions and admissions of the defendant. White v. White, 45 N. H. 121; Richardson v. Richardson, 50 Vt. 119; Woolfolk v. Woolfolk, 53 Ga. 661; Derby v. Derby, 21 N. J. Eq. 36; Hughes v. Hughes, 44 Ala. 307; Latham v. Latham, 30 Gratt. (Va.) 307. As a general proposition no fault can be found with the rule as thus stated; any other practice would open the door to collusion or coercion. But where, as in the principal case, the confessions were reluctant, confidential and made to different parties, and direct proof was offered showing perfect freedom from any coercion or collusion, it would seem that, in cases of adultery at least, the act of which is so difficult to prove, such confessions would be

sufficient proof of adultery to grant the divorce. In the principal case the wife first confessed her guilt verbally to a lady friend and then reluctantly to her husband. The wife, against the will of her husband, had gone abroad for two years in succession to Rome, which was the home of the man with whom she confessed to have had adulterous intercourse. There was therefore no coercion. The husband, suspecting his wife, found in the possession of Miss Ray, a friend of his wife, letters from her admitting her intimacy with her Italian lover. These letters the husband obtained without the knowledge or consent of Miss Ray. Thus, there was no collusion. The wife afterwards admitted her guilt to her husband. Considering how impossible it would be to prove the act of adultery in such a case, or even to discover corroborating circumstances, other than the fact of her absence at the time, which was in evidence, it would seem the rule applied by the court was of unwarranted strictness. The reason and basis of the rule against confessions in such cases is completely disregarded in its application under such arbitrary statement of the rule and, despite the court's criticism, the position of Mr. Bishop, to which we have already alluded, is the only logical one, and the one to which the other courts of the country are gradually coming. Thus, in the case of Stewart v. Stewart, 65 N. Y. S. 927, three witnesses testified that defendant had admitted his adutery and were contradicted only by defendant and his alleged co-respondent. Several letters of defendant hinting at like admissions were also offered, defendants only explanation of them being that they were written under the influence of despondency. Held, that the evidence was sufficient to support the finding of the referee that defendant was guilty of adultery. So, also, in a recent case in Pennsylvania, the husband and three witnesses testified to a voluntary confession by the wife to her husband of her adultery. The wife denied the confession. Thereafter the parties occupied their respective rooms, and less than three months later a bill for divorce was filed by the husband, at which time the wife left her husband's home. Incriminating letters written by the wife to the co-respondent were positively identified by four persons as in the handwriting of the wife, and she stated she did not know whether she wrote them, though there was considerable evidence that she had recognized them as her work. The court held that this evidence was sufficient to warrant a divorce on the ground of adultery. Gruninger v. Gruninger, 190 Pa. St. 633, 43 Atl.Rep. 128.

WHO ARE PASSENGERS?

The question as to the *status* of a person as a passenger is one not always easily solved, but of much importance in determining certain legal rights and liabilities. A common carrier does not owe the same duty to a trespasser or a licensee that it does to whom it has assumed the relation of a carrier for hire. In a general sense, any one to whom the carrier owes the duty of transportation is a passenger for the time being. The rights and privileges of a passenger come into existence the instant a person offers himself for transportation, or comes upon the premises of the carrier and pays or tenders the toll allowed by law for the service demanded, with the intention of embarking at the first reasonable opportunity. And the duty which the carrier owes to the passenger lasts, as a rule, not only until the place of debarkation is reached and the passenger alights from the vehicle of transportation, but until he, with due promptness and diligence, leaves the premises of the carrier maintained for the accommodation and convenience of passengers entering and leaving the place of getting on and off. In studying out the subject under discussion attention will be first directed to instances where the relation of carrier and passenger is held to exist. It does not follow, necessarily, that a person must be entitled to carriage in a conveyance to be entitled to the protection and privilege of a passenger. Thus, where a person, by an innocent mistake, boards the wrong train for his destination, he is not a trespasser, for he intended to comply with the reasonable requirements of the carrier as to the payment of fare, and meant to be in the proper conveyance.[1] It is not always necessary for a passenger to pay his fare before he will be entitled to protection. He may, in many instances, become clothed with all the rights and immunities of a passenger before his fare is paid or even tendered. His rights cannot be postponed to the time the toll is actually paid; for, were this always true, the carrier might never demand it, either from obstinacy or oversight. It is the duty of the officers and agents of the carrier to seasonably demand the toll, and whether this is done before or at the time the passenger enters the conveyance, or is wholly neglected, the character of passenger attends one the instant he enters the premises of the carrier in good faith to become a passenger,

[1] Railway v. Gilbert, 64 Tex. 540; Gary v. Gulf, C. & S. F. Ry. Co., 17 Tex. Civ. App. 129, 42 S. W. Rep. 576.

and continues until he leaves the grounds at the end of the journey.[2]

The character of a passenger attaches to a person the instant he goes upon the premises set apart by the carrier for the accommodation of passengers wishing to become such for the *bona fide* purpose of commencing his journey,[3] and of course, one who goes to the waiting room of a railway company for the purpose of taking passage is a passenger while thus waiting.[4] One is a passenger when he goes upon the premises of a railway company to be transported, though he may have no money with which to pay his fare, where he procures a ticket from the agent upon his individual credit, though the agent may have no authority to sell tickets on a credit. In such a case the relation arises because the act of sale is within apparent scope of the authority of the agent to sell tickets who, if he sells contrary to instructions, is liable to his principal. But the purchaser is not a trespasser.[5] One who goes upon the gang plank of a steamboat for the purpose of taking passage becomes a passenger from the instant he does so until the end of the journey and a safe debarkation.[6] A person is a passenger and entitled to protection as such though the car, steamer or other vehicle upon or in which he is being transported is let or leased to a private individual, corporation or other person, and such lessee, by the terms of the contract of lease, has the absolute dominion, management and control of the leased property to the exclusion of the lessee.[7] This rule arises from principle of law which forbids a common carrier to denude itself of the liability imposed upon it by law in serving the public in such capacity. Public policy requires that carriers be held to a strict accountability to those dealing with them as such, and this duty is preserved to the public whether the carrier discharges the duty itself or intrusts others with it instead. Upon this salient principle it is held that a railroad company is liable to the owner of stock killed by the running of its trains chartered or leased to another.[8] Likewise where a passenger is carried beyond his station by the lessee, he may recover from the carrier for the injury.[9] So where a transportation company charters to another one of its vessels for an excursion, the carrier is liable to a passenger who is assaulted by a member of the crew of the boat employed by the charterer.[10] And where a a railroad company let a train for a picnic excursion to a social organization, and while the train was in charge of the lessees one who did not belong to the organization was excluded from the association and ejected from the train, it was held that the lessor was liable, though the act of exclusion was by those to whom the train had been chartered and who had charge and exclusive control thereof by the terms of lease, and the act was without the knowledge or consent of the lessor.[11] A person becomes a passenger from the time he enters a passenger coach which is open for passengers, though at the time of doing so the car has not been pulled up to the station or the train made up.[12] One entering a train where it

[2] McKimble v. Boston & Me. R. R., 139 Mass. 542; Sharrer v. Paxon, 171 Pa. St. 126, 33 Atl. Rep. 120; Saunders v. Southern Pac. Co., 13 Utah, 275, 44 Pac. Rep. 932; Cogswell v. West St. & N. E. Electric Ry. Co., 5 Wash. 46, 31 Pac. Rep. 411.

[3] Norfolk & Western R. R. Co. v. Galliher, 89 Va. 639, 16 S. E. Rep. 935.

[4] Shannon v. Boston & A. Ry. Co., 78 Me. 52, 2 Atl. Rep. 678.

[5] Ellsworth v. Chicago, B. & Q. Ry. Co., 98 Iowa, 95, 63 N. W. Rep. 584.

[6] Rogers v. Kennebeck Steamboat Co., 86 Me. 261, 29 Atl. Rep. 1069.

[7] Abbott v. Johnston & C. R. R. Co., 80 N. Y. 27; Cogswell v. West St. & N. E. Electric Ry. Co., 5 Wash. St. 46, 31 Pac. Rep. 411; Lakin v. Willamette Valley & C. R. R. Co., 13 Oreg. 436, 11 Pac. Rep. 68; Thomas v. West Jersey, R. R. Co., 101 U. S. 71; Freeman v. Minneapolis & St. L. R. R. Co., 28 Minn. 443, 11 N. W. Rep. 594; Washington, Alexandria & G. R. R. Co. v. Brown, 84 U. S. 445; Moore v. St. Louis, I. M. & S. Ry. Co., 67 Ark. 389, 55 S. W. Rep. 161; White v. Norfolk & W. R. Co., 115 N. Car. 631, 20 S. E. Rep. 191; Chesapeake & O. Ry. Co. v. Osborne, 97 Ky. 112, 30 S. W. Rep. 21; Collins v. Texas & Pac. Ry. Co., 15 Tex. Civ. App. 169, 39 S. W. Rep. 643; Gulf, C. & S. F. Ry. Co. v. Morris, 67 Tex. 692, 4 S. W. Rep. 156; Missouri Pac. Ry. Co. v. Dunham, 68 Tex. 231, 4 S. W. Rep. 472; Balsey v. St. Louis, A. & T. H. R. R. Co., 119 Ill. 68, 8 N. E. Rep. 859; Naglee v. Alexandria & F. Ry. Co., 83 Va. 707, 3 S. E. Rep. 369; Breslin v. Somerville Horse R. R. Co., 145 Mass. 64, 13 N. E. Rep. 65; Texarkana & Ft. Smith Ry. Co. v. Anderson, 67 Ark. 123, 53 S. W. Rep. 673.

[8] Missouri Pac. Ry. Co. v. Dunham, 68 Tex. 231, 4 S. W. Rep. 472.

[9] Texarkana & Ft. Smith Ry. Co. v. Anderson, 67 Ark. 123, 53 S. W. Rep. 673.

[10] White v. Norfolk & W. R. Co., 115 N. Car. 631, 20 S E. Rep. 191.

[11] Moore v. St. Louis, I. M. & S. Ry. Co., 67 Ark. 389, 55 S. W. Rep. 161.

[12] Missouri, K. & T. Ry. Co. v. Simmons, 12 Tex. Civ. App. 500, 33 S. W. Rep. 1096.

makes a usual stop, and where it is the custom of the carrier to permit passengers to get aboard, though the place is not a regular passenger station, is nevertheless a passenger.[13] In other words, one intending to pursue a journey in a public conveyance becomes clothed with the privileges and rights of a passenger as soon as he enters the vehicle being open and ready to receive passengers by the rules or custom of the carrier. He is not postponed in the enjoymentof this right until the vehicle of carriage is actually put in motion.[14] So one is a passenger while attempting, without negligence on his part, to board a railway train at a proper place and time for passage.[15] And an express messenger who is carried by a railway company in a car set apart for the express business, and who serves the express company in the capacity of messenger on the train is, in law, a passenger and entitled to protection from the negligence of the railway company; and this is true though there is no contractual relation between the messenger and the carrier and though he pays the carrier no toll. For, in cases of this kind, there is always either an agreement with the carrier and express company that the messenger is to be carried for the purpose of looking after the business of the express company along the line of the carrier. This arrangement amounts to an undertaking on the part of the carrier to transport the messenger for which a compensation satisfactory is paid by the express company. The messenger, then, is on the vehicle of the carrier with its express or implied consent, and it has received value for the act of transportation. This being true, it necessarily follows that the carrier in all such cases owes the messenger the protection of a passenger.[16] Nor can the carrier shield itself from its duty and liability as such to an employee of an express company thus riding with the consent of the carrier under a contract for transportation with the express company stipulating that the carrier is not to be liable to any employee of the express company for negligence in the event of an injury at the hands of the carrier.[17] And where an express messenger who had been in the service of an express company operating an express service on the line of the carrier, but who has recently quit the service and was riding in a passenger car, is injured by the negligence of the carrier, it will be liable, though the conductor, supposing the messenger to be still in the employ of the express company, demanded no fare of him and he paid none, the messenger having been ready, able and willing to pay.[18] So, upon the same principle, it is held that a railway postal clerk who is employed by the general government to handle and distribute mails in transit is a passenger, for the carrier permits him to ride at the instance of the government and is paid an agreed compensation by the government for the transportation of the mails and the clerks necessary to handle the same while being thus transported.[19]

The fact that a postal car is necessarily more dangerous for travel, owing to its proximity to the engine, or other cause, does not serve to relieve the carrier from liability.[20] And, of course, such an officer of the government is a passenger while riding in a passenger car on return trip home, which privilege is stipulated for in the contract with the carrier and the government.[21] And the rule

[13] Dewire v. Boston & M. R. Co., 148 Mass. 343, 19 N. E. Rep. 523.

[14] Butler v. Glenns Falls, S. H. & Ft. E. St. Ry. Co., 121 N. Y. 112, 24 N. E. Rep. 187; North Chicago St. Ry. Co. v. Williams, 140 Ill. 275, 29 N. E. Rep. 672; Sharrer v. Paxson, 171 Pa. St. 120, 33 Atl. Rep. 120; Houston & T. C. R. R. Co. v. Washington (Tex. Civ. App.), 30 S. W. Rep. 719.

[15] Butler v. Glenns Falls, S. H. & Ft. E. St. Ry. Co., 121 N. Y. 112, 24 N. E. Rep. 187.

[16] Fordyce v. Jackson, 56 Ark. 594, 20 S. W. Rep. 528, 597; Brewer v. New York, L. E. & W. R. R. Co., 124 N. Y. 59, 26 N. E. Rep. 324; Blair v. Erie Ry. Co., 66 N. Y. 313.

[17] Brewer v. New York, L. E. & W. R. R. Co., 124 N. Y. 59, 26 N. E. Rep. 324.

[18] Florida S. Ry. Co. v. Hirst, 30 Fla. 1, 11 South. Rep. 506.

[19] Gulf, C. & S. F. Ry. Co. v. Wilson, 79 Tex. 371, 15 S. W. Rep. 280; Arrowsmith v. Nashville & D. R. R. Co., 57 Fed. Rep. 165; St. Louis, I. M. & S. Ry. Co. v. Stewart, (Ark.), 61 S. W. Rep. 169; Baltimore & O. R. R. Co. v. State, 72 Md. 36, 18 Atl. Rep. 1107; Cleveland, C. C. & St. L. Ry. Co. v. Ketcham, 133 Ind. 346, 33 N. E. Rep. 116; Mellor v. Missouri Pac. Ry. Co., 105 Mo. 455, 16 S. W. Rep. 849; Gleason v. Virginia Mid. Ry. Co., 140 U. S. 435, 11 Sup. Ct. Rep. 859; Libby v. Maine Cent. R. R. Co., 85 Me. 34, 26 Atl. Rep. 943; Ohio & M. Ry. Co. v. Voight, 122 Ind. 228, 23 N. E. Rep. 774; Norfolk & W. R. R. Co. v. Shott, 92 Va. 34, 22 S. E. Rep. 811; Louisville & Nashville R. R. Co. v. Kingman (Ky.), 35 S. W. Rep. 264; Voight v. Baltimore & O. S. W. Ry. Co., 79 Fed. Rep. 561; McGoffin v. Missouri Pac. Ry. Co., 102 Mo. 540, 15 S. W. Rep 76.

[20] Baltimore & O. R. R. Co. v. State, 72 Md. 36, 18 Atl. Rep. 1107.

[21] Cleveland, C. C. & St. L. Ry. Co. v. Ketcham, 133 Ind. 346, 33 N. E. Rep. 116.

is the same though the postal clerk is not on his regular run, but traveling in the mail car and as an act of courtesy, assisting the regular mail clerks in handling and distributing the mail.[22] It has been held that a porter in the service of a sleeping car company, who collects fares from the passengers for his principal and attends to the duties incident to the employment of porters on such cars, is a passenger while in such service, though he pays no toll for passage and is subject to the rules governing employees of the carrier.[23] A drover who attends stock in transit for the purpose of watering, feeding and caring for them, with the knowledge or consent of the carrier, whether he be traveling on a drover's pass or otherwise, is a passenger; and this is true though his contract with the carrier denominates him an employee and subject to the rules of law governing the rights of employees or servants.[24] But while a drover caring for stock in transit is a passenger, as a rule he has not all the rights and privileges of a passenger who pays fare for a first-class accommodation. He may not, for instance demand of the carrier that he be provided with a first-class passenger car or apartment, for the character of his duties and the nature of the train which carries live stock to market preclude such an idea and is absolutely inconsistent with privileges of this kind. The drover is only entitled by reason of his character as passenger to such accommodations as are usual and proper for stock trains. The hardships and inconveniences necessarily incident to such travel he must submit to.[25] But a carrier cannot relieve itself from liability to a drover for an injury caused by its negligence by a contract to this effect. This is upon the familiar principle that it is against public policy to permit a common carrier to shield itself from the consequence of its negligence or failure to perform its public duty by a contract.[26] While an employee or servant would not usually be regarded as a passenger, yet when a servant of a carrier is permitted to ride without being required to pay toll or fare therefor because of his connection with the carrier, when not on duty as a servant, he will be entitled to the legal *status* of a passenger.[27] One to whom a railroad company or other carrier has issued a pass entitling the holder to ride free is a passenger within the legal meaning of the term,[28] and the same rule applies where one is riding upon the invitation of the officers in charge of the conveyance though, in such cases, there is no intention to pay or receive fare.[29] Where a passenger riding on the train of an initial carrier is switched while in his car to another railroad line, between which and the first carrier there is an arrangement by which passengers from the initial line are continued on their journey by attaching the transferred car to the train of the second carrier, the relation of passenger and carrier begins with the succeeding company as soon as the car is switched to the track of the second carrier to be taken up and carried to destination by the latter.[30] A person boarding a car of a street railway company for the purpose of travel with the intention of paying the legal fare is a passenger as soon as he steps upon the car when it has been stopped for him for this pur-

[22] Cleveland, C. C. & St. L. Ry. Co. v. Ketcham, 133 Ind. 346, 33 N. E. Rep. 116.

[23] Jones v. St. Louis S. W. Ry. Co., 125 Mo. 666, 28 S. W. Rep. 883.

[24] Smith v. Railroad Co., 29 Barb. 132; Missouri Pac. Ry. Co. v. Ivey, 71 Tex. 409, 9 S. W. Rep. 346; New York C. R. R. Co. v Lockwood, 17 Wall. 357; New York, Chicago & St. L. R. R. Co. v. Blumenthal, 160 Ill. 40, 43 N. E. Rep. 809; Lawson v. Chicago, P. M. & O. Ry. Co., 64 Wis. 447, 24 N. W. Rep. 618; Indianapolis & St. L. R. R. Co. v. Horst, 93 U. S. 291; Lakeshore & M. S. Ry. Co. v. Brown, 123 Ill. 162, 14 N. E. Rep. 197; Omaha & R. V. Ry. Co. v. Crow, 47 Neb. 84, 66 N. W. Rep. 21; Little Rock & F. S. Ry. Co. v. Miles, 40 Ark. 298; Saunders v. Southern Pac. Co., 13 Utah, 275, 44 Pac. Rep. 932; Chicago, M. & St. P. Ry. Co. v. Carpenter, 56 Fed. Rep. 451.

[25] Omaha & R. V. Ry. Co. v. Crow, 47 Neb. 84, 66 N. W. Rep. 21.

[26] Omaha & R. V. Ry. Co. v. Crow, 47 Neb. 84, 66 N. W. Rep. 21; Saunders v. Southern Pac. Co., 13 Utah, 275, 44 Pac. Rep. 932.

[27] Dickinson v. West End St. Ry. Co. (Mass.), 59 N. E. Rep. 60; Gradin v. St. Paul & D. Ry. Co., 30 Minn. 217, 14 N. W. Rep. 881; Chattanooga Rapid Transit Co. v. Venable, 105 Tenn. 460, 58 S. W. Rep. 861.

[28] Steamboat New World v. King, 16 How. (U. S.) 469; Lakeshore & M. S. Ry. Co. v. Brown, 123 Ill. 162, 14 N. E. Rep. 197; Dorsey v. Atchison, T. & S. F. Ry. Co., 83 Mo. App. 528.

[29] Muehlhausen v. St. Louis R. Co., 91 Mo. 332, 2 S. W. Rep. 315; New Jersey Traction Co. v. Danbeck (N. J. Law), 31 Atl. Rep. 1038; Ekman v. Minneapolis St. Ry. Co., 34 Minn. 24, 24 N. W. Rep. 291; Metropolitan St. R. Co. v. Moore, 83 Ga. 453, 10 S. E. Rep. 730. And see Railroad Co. v. Stout, 17 Wall. 657; Chattanooga Rapid Transit Co. v. Venable (Tenn.), 58 S. W. Rep. 861.

[30] Chattanooga, R. & C. R. R. Co. v. Huggins, 89 Ga. 494, 15 S. E. Rep. 848.

pose.[31] It is not necessary that a person be riding on a passenger train in order to have the legal protection due a passenger. If the carrier accepts the person applying for transportation on a freight, construction or other train, the relation of passenger and carrier exists. In such cases the carrier must "provide all things necessary to the security of the passenger reasonably consistent with their business and appropriate to the means of conveyance employed by them, and to adopt the highest degree of practical care, diligence and skill that is consistent with the operating of their roads, and that will not render their use impracticable or inefficient or the intended purpose of the same."[32] A person is, generally speaking, a passenger when he boards a freight train for his destination, having procured a ticket or being ready, willing and able to pay his fare where such trains, by custom, carry passengers and no rule of the company forbidding the practice is brought to the knowledge of the person thus intending to take passage.[33] A person who purchases a ticket is a passenger and entitled to transportation, though by mistake of the agent selling the ticket one is given the purchaser which does not entitle the passenger to carriage. It is the payment of the fare which affects the contractual relation between passenger and carrier, and as the ticket is only evidence of this, a ticket which does not properly evidence the right of carriage will not preclude the passenger from his right when the fault of giving the wrong ticket rests upon the carrier or its agents.[34] One entering the wrong train by mistake is entitled to the rights of a passenger while thereon and until he debarks at the first reasonable opportunity.[35]

Who Are Not Passengers.—It needs no argument to vindicate the theory that a mere trespasser is not a passenger. A carrier cannot be held to the extraordinary care due a passenger to one wrongfully on its vehicle of carriage or grounds and station facilities for the accommodation of passengers proper, who has no business to transact with the carrier and who wrongfully or tortiously comes upon the property or premises of the carrier. No one, for instance, has a right to ride, or attempt to ride, in a public conveyance as a passenger without payment or tender of the legal toll, or without at least having permission of the carrier or its agents to ride. And where a person boards a vehicle of a carrier not intending to pay fare and having no legal right to demand his carriage, he is a trespasser, pure and simple, and cannot assert any rights of a passenger.[36] And one who boards a freight train which is not required by law to carry passengers, is not entitled to the legal rights of a passenger, as such trains are for the transportation of freight, are not built nor constructed for the convenience or carriage of passengers, and every one is bound to take notice that he has no rights as a passenger upon such train.[37] Of course this rule applies to freight trains, construction trains, timber trains and all the other kind of trains not intended for, nor adapted to, the carriage of passengers. This being especially true where the person boarding such a train is told by the officers and servants of the carrier in charge that it is against the rule to carry passengers and that such servant or officer has no authority to accept pay for transportation on such a train.[38] So, where one procures the conductor in charge of a train to carry him in violation of a known rule of the carrier without charge, he is a mere trespasser and not entitled to the protection of a passenger.[39] Likewise a person boarding an obscure part of a train not intending to pay for

[31] Gaffney v. St. Paul City Ry. Co. (Minn.), 84 N. W. Rep. 304.

[32] St. Louis, I. M. & S. Ry. Co. v. Sweet, 57 Ark. 287, 298, 21 S. W. Rep. 587; Green v. Pacific Lumber Co. (Cal.), 62 Pac. Rep. 747.

[33] Boehm v. Duluth, S. S. & A. Ry. Co., 91 Wis. 592, 65 N. W. Rep. 506.

[34] Hot Springs R. R. Co. v. Delony, 65 Ark. 177, 45 S. W. Rep. 351.

[35] Cincinnati, H. & I. R. R. Co., 112 Ind. 26, 13 N. E. Rep. 122.

[36] Muehlhausen v. St. Louis R. Co., 91 Mo. 332, 2 S. W. Rep. 315; Plantz v. Boston & A. R. R. Co., 157 Mass. 377, 32 N. E. Rep. 356; Condran v. Chicago, M. & St. P. Ry. Co., 67 Fed. Rep. 522; Railway Co. v. Beggs, 85 Ill. 80.

[37] St. Louis, I. M. & S. Ry. Co. v. Ledbetter, 45 Ark. 246; Arkansas Midland Ry. Co. v. Griffith, 63 Ark. 491, 39 S. W. Rep. 550.

[38] Prince v. Railway Co., 64 Tex. 146; Gulf, C. & S. S. Ry. Co. v. Campbell, 76 Tex. 174, 13 S. W. Rep. 19; San Antonio & A. P. Ry. Co. v. Lynch, 8 Tex. Civ. App. 513, 28 S. W. Rep. 252; Louisville & N. Ry. Co. v. Hailey, 94 Tenn. 383, 29 S. W. Rep. 367; Illinois Cent. Ry. Co. v. Meachem, 91 Tenn. 428, 19 S. W. Rep. 232; International & G. N. Ry. Co. v. Hanna (Tex. Civ. App.), 58 S. W. Rep. 548.

[39] McVeety v. St. Paul, M. & M. Ry. Co., 45 Minn. 268.

his transportation is only a trespasser, and not a passenger, though upon being discovered by a brakeman and on demand of toll he pays the same to the brakeman, such a servant having no authority to either collect toll or sanction the presence of persons on the train as passengers.[40] A person cannot become a passenger by acts of imposition or fraud upon the carrier. He must act in good faith and fairly bring himself within the rule of law entitling him to carriage. And where one is riding on a ticket which was sold for the exclusive use of another he is a trespasser, and the carrier may so treat him.[41] Precisely the same rule applies, of course, where a person attempts to ride on a pass not transferrable, belonging to another.[42] A person ceases to be a passenger on a street car as soon as he steps off in a public street, for a street car company cannot have station facilities as railroads do, and the necessities of the case make it proper to relieve them of the duty of carrier as soon as one lands safely from the car at a usual or proper stopping place.[43] And one who, by mistake, boards the wrong train, and a short way out is put off for his accommodation to the end that he may walk back to the station and take the right train, loses his character of passenger when he leaves the train.[44] Where a train is moving out of a station on time as usual, a person does not become a passenger so as to protect himself from any injury he may receive in trying to board the train in motion where none of the agents of the train knew of his purpose to take passage though he may have a ticket or the money with which to pay the fare to his objective point.[45] So, one intending to board a starting street car by the front instead of the rear platform, the latter being the proper place, who does not signal his intention of boarding to the conductor or motorman, and neither his acts in trying to thus board the car nor his intention so to do is known to the servants in charge, he does not become a passenger so as to recover for an injury received in trying to get on.[46] Likewise where one signaled the conductor of a street car but the signal was not heeded, he was not protected as a passenger in trying to board at all events, though the car was moving only three miles per hour.[47] It would be otherwise were the signal heeded and the car stopped that the passenger might get on.[48] One who had a pass on a construction train, who boarded it when it started to a water tank preparatory to making the usual trip, which was customary before starting on the regular trip, and which was known to such person, was held not to be a passenger while the train was going to and returning from the water tank to the station, the conductor of the train not knowing he was aboard.[49] A fireman off duty riding on the engine at the invitation of the engineer, with the knowledge of the conductor, who neither pays nor offers to pay fare and none is demanded of him, but the rules of the company, with which he is familiar, forbid any person other than a fireman and engineer actually on duty as such to be upon the engine, is a trespasser, not a passenger.[50] One who has a drover's pass authorizing him to ride on a stock train for the purpose of caring for stock in transit has no right to demand passage on a passenger train, for the contract of carriage restricts the rights of the holder of such a ticket to a named train and authorizes transportation on no other. The holder of a stock ticket, therefore, is a trespasser on a regular passenger train.[51] Where one purchases a return ticket, the provisions of which require the holder to have it signed

[40] Chicago & E. Ry. Co. v. Field, 7 Ind. App. 172, 34 N. E. Rep. 406.

[41] Way v. Chicago, R. I. & P. R. R. Co., 64 Iowa, 48, 19 N. W. Rep. 828; Post v. Chicago & N. W. Ry. Co., 14 Neb. 110, 15 N. W. Rep. 225.

[42] Way v. Chicago, R. I. & P. Ry. Co., 73 Iowa, 463, 35 N. W. Rep. 525; Louisville, N. A. & C. Ry. Co. v. Thompson, 107 Ind. 442, 8 N. E. Rep. 18, 9 N. E. Rep. 357.

[43] Creamer v. West End St. Ry. Co., 156 Mass. 320, 31 N. E. Rep. 391.

[44] Finnegan v. Chicago, St. Paul, M. & O. Ry. Co., 48 Minn. 378, 51 N. W. Rep. 122.

[45] Webster v. Fitchburg Ry. Co., 161 Mass. 298, 37 N. E. Rep. 165; Jones v. Boston & Me. Ry., 163 Mass. 245, 39 N. E. Rep. 1019.

[46] Pitcher v. People's St. Ry. Co., 154 Pa. St. 560, 26 Atl. Rep. 559. See also Donovan v. Hartford St. Ry. Co., 65 Conn. 201, 32 Atl. Rep. 350; Padgitt v. Moll, 159 Mo. 143, 60 S. W. Rep. 21.

[47] Schepers v. Union Depot Co., 126 Mo. 665, 29 S. W. Rep. 712.

[48] Smith v. St. Paul City Ry. Co., 32 Minn. 1, 18 N. W. Rep. 827.

[49] Brown v. Scarboro, 97 Ala. 316, 12 South. Rep. 289.

[50] Virginia M. Ry. Co. v. Roach, 83 Va. 375, 5 S. E. Rep. 179. See, too, Chicago, St. Paul, M. & O. Ry. Co. v. Bryant, 65 Fed. Rep. 969.

[51] Thorp v. Concord R. R. Co., 61 Vt. 378.

and stamped by the agent at destination as a condition to validity on the return trip, a failure to have it thus signed and stamped will invalidate the return part of the contract, and the unstamped ticket will not entitle the holder to the privileges of a passenger on the return passage.[52] So, too, a carrier may lawfully expel a person who is attempting to ride on a ticket which has expired by limitation, and who refuses to offer anything else for his passage.[53] A passenger who boards a train which is not scheduled to stop at his destination can be required to get off at the first stop before arriving at his station, or required to pay additional fare to the next regular stop.[54] The holder of a ticket, or a passenger who has paid his fare may forfeit his *status* of passenger by gross misconduct on his part. A passenger, therefore, who, by the use of violent, obscene or offensive language, disturbs and annoys the peace and quiet of other passengers in the car or other vehicle, may be ejected therefrom without liability on the part of the carrier.[55] A person who persists in riding in a public conveyance without paying the legal toll and is expelled for such non-payment, though a passenger until thus ejected, becomes at and after the time of expulsion a trespasser, and he cannot afterwards reinvest himself with the rights of a passenger by offering to pay fare. He has forfeited his *status* by his own misconduct, and must suffer the consequences.[56]

Nashville, Ark. W. C. RODGERS.

[52] Boylan v. Hot Springs R. R. Co., 132 U. S. 146, 10 Sup. Ct. Rep. 50.

[53] Rawitsky v. Louisville & N. Ry. Co., 40 La. Ann. 47, 3 South. Rep. 387.

[54] Duling v. Philadelphia & W. B. R. R. Co., 66 Md. 120, 6 Atl. Rep. 594.

[55] Louisville & N. R. R. Co. v. Logan (Ky.), 10 S. W. Rep. 655. See, too, Peavy v. Georgia R. R. Co., 31 Ga. 485, 8 S. E. Rep. 70; Chicago City Ry. Co. v. Peletier, 134 Ill. 120, 24 N. E. Rep. 770; Eads v. Metropolitan Ry. Co., 43 Mo. App. 536.

[56] Pickens v. Richmond & D. R. R. Co., 104 N. Car. 312, 20 S. E. Rep. 556; Atchison, T. & S. F. R. R. Co. v. Dwelle, 44 Kan. 394, 24 Pac. Rep. 500; Harrison v. Fink, 42 Fed. Rep. 787; North Chicago St. Ry. Co. v. Olds, 40 Ill. App. 421; Georgia S. & F. R. R. Co. v. Asmore, 88 Ga. 529, 15 S. E. Rep. 13; Coyle v. Southern Ry. Co. (Ga.), 37 S. E. Rep. 163.

MARRIAGE—SUIT TO ANNUL — FRAUDULENT REPRESENTATIONS.

CRANE v. CRANE.

Court of Chancery of New Jersey, July 16, 1901.

An explicit statement by a man about to be married that he was not afflicted with the loathsome disease called "syphilis," made when it was his duty to state the truth, and knowingly false, is such a fraudulent representation as affects an essential of the marital relation.

MAGIE, Chancellor: The bill in this cause seeks a decree annulling the marriage of the complainant with defendant upon the ground that the matrimonial contract between them was entered into by complainant under the inducement of a false and fraudulent representation made by defendant, that he was not afflicted with "syphilis." The contract of marriage is one of exceptional and peculiar character. It may not be abrogated and avoided by the parties thereto as other contracts may be. On grounds of public policy, the state has an interest in the *status* created by a marriage contract, and, when made; it can only be dissolved on grounds and by judicial proceedings sanctioned by law. An action for nullity is said to be of two sorts: One, where its purpose is to procure a decree making void a voidable marriage; the other, where the marriage is in fact void, its purpose is to procure a decree declaring it to be so. See 2 Bish. Mar., Div. & Sep. § 794; A. v. B., 1 Prob. & Div. 559. The present action is of the former kind. In Carris v. Carris, 24 N. J. Eq. 516, the court of errors recognized that in a proceeding to annul a marriage apparently created by contract, for the reason that the contract was induced by fraud, a like public policy was incidentally involved. While asserting and exercising the jurisdiction to decree a marriage void for fraud, the court distinguished a proceeding seeking such a decree from the ordinary case seeking equitable relief against contracts induced by fraud. The doctrine laid down in the prevailing opinion of Mr. Justice Bedle was that, while a court of equity would ordinarily set aside any contract which had been entered into by the inducement of fraud, yet a marriage contract would not be annulled except upon proof of such fraud as extended to and affected some essential of the marital relation, and not then if the avoidance of the marriage contract would be against sound considerations of public policy. It was declared that extraordinary fraud would alone justify the avoidance of the marriage contract. The doctrine was applied in that case to the following circumstances: The defendant, a woman, by concealing the fact that she was pregnant with child by another man, had induced the complainant to contract marriage with her. Since at the time of the contract, and for the period of gestation, under the impregnation of another person, she was incapable of being impregnated by complainant, it was deemed that an essential of the

marital relation, viz., the ability to propagate, was affected by the concealment, which was fraudulent. Since the contract, if not annulled, compelled complainant to accept the spurious issue as his own, or to repudiate it, with the result of marital estrangement, it was held that public policy did not forbid, but rather required, the avoidance of the marriage contract which was induced thereby. In the case before me there is no evidence, expert or otherwise, that the disease with which defendant was suffering at the time of the marriage had rendered him incapable of begetting children.

It is contended, as one ground for the relief asked, that it is matter of common knowledge, of which the court should take notice, that children begotten by one so diseased inherit the disease. While the proofs do not establish a case exactly parallel with that presented in Carris v. Carris, there is expert evidence, which is entirely convincing, that at the time of the marriage, and thereafter, marital intercourse between the parties could only take place at the imminent risk of communicating the foul disease to the healthy party, the complainant. The question, then, is whether, if the proofs establish a fraudulent representation by defendant of freedom from the disease of syphilis, the fraud is to be adjudged to affect an essential of the marriage relation. Misrepresentation as to freedom from disease in general, or concealment of the existence of a disease, although one in common apprehension communicable and transmissible to offspring, cannot, in my judgment, be so regarded. They fall within the line of false representations as to family, fortune, or external condition, declared by Mr. Justice Bedle to be insufficient to justify the annulment of marriage. As to such and like matters the parties take each other for better or for worse. 1 Bish. Mar., Div. & Sep. § 457. But as to a fraudulent representation of freedom from syphilis I have reached a different conclusion. When a wife has discovered that her husband is infected with that disease, this court has held, in accord with decisions elsewhere, that she is justified in refusing to permit marital intercourse, and when he, knowing, or having reason to believe, he is infected, persists in maintaining marital intercourse with her, he is guilty of extreme cruelty, for which a divorce will be decreed. Cook v. Cook, 32 N. J. Eq. 475. Discovery of the existence of that disease ought to produce, and would produce, a denial of marital intercourse, and consequently render impossible the procreation of children of the marriage. In that view the fraud in question touches an essential of the marital relation, under the doctrine of Carris v. Carris. Nor do any considerations of public policy debar a party imposed on by such fraud, and induced to enter into a marriage contract, the continuance of which must produce results so disastrous, from the relief of a judicial declaration that the contract is null and void.

In the case in hand equity ought not to act upon any mere construction of fraud from conduct. To move its hand to obliterate this marriage contract for defendant's representation, it must appear that the defendant possessed a guilty knowledge of its untruth, or that being called upon to state the truth as to a fact, under circumstances which cast upon him a duty to do so, defendant stated that to be true which in fact was false and known to him to be false. He was called on to state the truth about a fact in respect to which he might be supposed to have knowledge. The demand upon him came from one who was engaged to marry him, and its obvious purpose was to ascertain the truth as to a fact important for her to know, for, if true, it would have justified her in receding from her engagement. The circumstances cast upon him a duty. If his response to her demand was knowingly false, it was a gross fraud. As I find his denial to have been false and knowingly false, and that it operated to produce a marriage under circumstances which affected an essential of the marriage relation, I conclude that the complainant is entitled to relief, and to a decree annulling her marriage with defendant.

NOTE. — *Misrepresentation or Concealment of the Existence of a Venereal Disease as a Ground for a Divorce or the Annulment of Marriage.*—In the selection and annotation of cases in this department of the CENTRAL LAW JOURNAL, the aim is to present those cases in which the principles of the questions discussed have become confused or are disregarded, and the authorities have become, or are in danger of becoming, a mass of arbitrary and irreconcilable holdings. Such a one is the question taken as the subject of this annotation. The judicial utterances on this question, according to that prince of legal text writers, Mr. Bishop, "are largely conflicting, and otherwise muddled." It might be well, therefore, to obtain at the very beginning of our discussion of this question, a clear idea of its general underlying principle, and the reason for it. Mr. Bishop's statement of it cannot be improved upon. He says: "In the contract of marriage which forms the gateway to the marriage *status*, the parties take each other for better, for worse, for richer, for poorer, to cherish each other in sickness and in health; consequently, a mistake, whether resulting from accident, or, in general, from fraudulent practices, in respect to the character, fortune, health, or the like, does not render void what is done." The reason for this rule, according to Mr. Bishop, is that the nature of marriage forbids its validity to rest on any stipulations concerning these accidental qualities, the qualities just mentioned being said to be merely accidental, not going to the essentials of the relation. Mr. Bishop then gives this striking instance: "Should a man, in words, agree with a woman to be her husband only on condition of her being so rich, so virtuous, so wise, so healthy, of such a standing in society; yet, should he then celebrate the nuptials on her representing herself to possess those qualities, while in truth she did not; still, in the act of marriage, he says to her, in effect and in law, 'I take you to be my wife whether you have the qualities or not, and whether you have deceived me or not.' In other words, he waives the condition. To carry such a condition into the marital relation would violate its spirit and purpose, and be contrary to good morals."

There is a distinction to be observed between the presence of a venereal disease, as a ground for divorce, and for annulment of the marriage. It has quite often been held that for a husband or wife to attempt to have carnal intercourse with the other after contracting a venereal disease, is such extreme cruelty as to be ground for divorce. Cook v. Cook, 32 N. J. Eq. 475; Canfield v. Canfield, 34 Mich. 519; Popkin v. Popkin, 1 Hagg. 733; Leach v. Leach (Me. 1887), 8 Atl. Rep. 349. But the fact that the wife was infected, and that she had been unchaste before marriage or unfaithful afterwards, there being no proof that the husband had ever suffered from the disease, is not sufficient. Morphett v. Morphett, L. R. (1 P. & D.) 702. Also in Holthoefer v. Holthoefer, 47 Mich. 260, it was held that the fact that a wife, whose chastity is unsuspected, is found to have a venereal disease, is not sufficient evidence that the disease was communicated to her by her husband. She must show affirmatively that she contracted the disease from the latter. The court admits, however, that the communication of a venereal disease by a husband to his wife is such extreme cruelty as to justify a divorce on her application. See also Canfield v. Canfield, 34 Mich. 519. So also where a husband who had the same venereal disease twice before his marriage, and shortly after his marriage consorted with at least one lewd woman, and his physical condition was such as to render it extremely probable that he was again infected, had intercourse with his wife, and thereby communicated the venereal disease to her,—the court held that he was guilty of extreme cruelty, and a divorce was decreed therefor. Cook v. Cook, 32 N. J. Eq. 476. The defendant in this case had knowledge that he was a victim of the disease charged, but thought he was recovering and convalescing from it. The court said on this point: "If a husband, knowing that he is in such a state of health that, by having connection with his wife, he will run the risk of communicating venereal disease to her, recklessly has connection with her and thereby communicates the disease to her, he is guilty of cruelty, and the presumption is that he knew his own state of health and the probable result of the connection. See also Boardman v. Boardman, L. R. (1 P. & D.) 233; Long v. Long, 2 Hawks. 189. In Strain v. Strain, 13 Scotch Sess. Cas. (4th Ser.) 132, Lord Shand said: "The disease of defendant was contracted before his marriage. He was not treated by a medical man at all, but by a person unskillful in the treatment of such a disease. The sore was indurated and still there, so that the risk in connection was quite obvious, and he would have been told so by any medical man. Indeed, he seems to have been conscious of his state. In the knowledge of these facts he had connection with his wife, with the result of communicating the disease to her, and I cannot characterize that otherwise than as a case of gross cruelty." It is evident from these cases that the fact that the husband had contracted such disease, either before or after the marriage, is of itself no ground for divorce. He must actually communicate it to her or threaten to have intercourse with her and thus to endanger her health and life, in order to bring it within the limits of extreme cruelty sufficient to sustain a decree for divorce. Thus where a man marries with a venereal disease on him, thus apparently endangering his wife, the court held that the probable chance of communicating the disease is not sufficient to support a charge of cruelty; there must be proof of the communication of the disease. Ciocci v. Ciocci, 26 Eng. L. & Eq. 604. The court in this case insists that the fact of communication must be proved, saying: "If there be not adequate proof of that fact, however great the moral delinquency of consummating a marriage with the probable chance of communicating the venereal infection, I am not prepared to say that so doing constitutes legally an act of cruelty, as understood in these courts. In order to constitute an act of legal cruelty there must be an actual communication of the disease, and the running the risk is not sufficient." This case, however, must be read in the light of Popkin v. Popkin, 1 Hagg. 765, note, where it was held that the having of connection with his wife by a husband infected with a venereal disease was an act of cruelty, even though the disease might not be communicated. So, also, where the husband in such a case insists upon having intercourse or attempts to force the wife to his bed. Popkin v. Popkin, *supra*. See, also, Cartwright v. Cartwright, 18 Tex. 626. Mr. Bishop in commenting on these cases states that they are founded in reason, and that if a husband "neither had nor intended to have any intercourse with his wife until he was cured" he could not be said to be guilty of legal cruelty, "but otherwise if he, in fact, put her in peril." This we conceive to be the true rule on this question.

As a ground for annulling the marriage we can find only one authority sustaining the principal case in its position that the misrepresentation or concealment of the existence of a venereal disease would amount to such fraud as would annul a marriage. In the recent case of Ryder v. Ryder, 66 Vt. 158, 25 Atl. Rep. 1029, 44 Am. St. Rep. 833, it was held that if a wife, at the time of contracting the marriage relation, conceals from her husband the fact that she has chronic and incurable syphilis, it will amount to a fraud for which the marriage may be annulled. The court seems to recognize the principle that misrepresentations or concealments as to the health of a party to a marriage contract is no ground for its annulment, and hastens to put its decision on the ground of impotency or incapacity of the defendant to have children, thus striking at one of the essentials of marriage. It therefore makes this definite and further holding that chronic and incurable syphilis, which renders the wife incapable of bearing healthy children, and which makes it impossible for the husband to have sexual intercourse with her without great danger of contracting the disease himself, is such physical incapacity as will afford a ground for annulling the marriage. It will be noticed that the court expressly limits its decision to *chronic* and *incurable* syphilis. That limitation follows necessarily from the reason of the rule as stated at the commencement of this annotation. Mere misrepresentation or concealment of the existence of syphilis or any other kind of disease furnishes no ground for annulling a marriage unless two things concur: first, the disease itself must strike at one of the essentials of marriage, of which capacity to procreate is the highest; and second, the disease must be incurable, so that there could be no hope of this essential being realized. Unless these two requisites concur there can in reason be no annulment of the marriage.

CORRESPONDENCE.

VALIDITY OF CONSTITUTIONAL PENALTY AGAINST SELLING SHARES OF STOCK ON MARGIN.

To the Editor of the Central Law Journal:

The constitution of the state of California provides that: "All contracts for the sale of shares of the

capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction." 1. Can such a constitutional provision stand as a forfeiture or penalty? 2. Is it not beyond the police power of a state to exact such an organic law in restraint of trade? 3. Is not such a section in a state constitution in the nature of class legislation? 4. Has the constitution of any state the right to discriminate against the sale of any particular property in an open market? Heavy litigation is in progress in different states in which these questions are involved. If any of your correspondents could shed any light on this subject it would prove very interesting to your readers.

Hoping some contributor can handle this subject, I am one of your subscribers,

San Francisco, Cal. T. S. MINOT.

JETSAM AND FLOTSAM.

THE PROFESSION OF LAW.

In an interview as to the advice he would give to a college graduate, the Hon. John F. Dillon said:

Inquiry among the members of the bar disclose not a great amount of encouragement for young men. Where a few at the head are having great success, the many at the bottom are eking out a bare existance by all sorts of expedients.

When my advice is asked by a young man or his parents whether he should study law, I endeavor, in view of the crowded state of the profession, to dissuade him from it, unless it is seen that he has abilities that in a marked degree demonstrate that he is especially fitted for the law.

The successful practice of the law in modern times requires very much more than a mere technical knowledge of the practical affairs of the world. Most cases do not present mere abstract legal problems, but concrete problems—what is the best thing to do—which involves a knowledge of business usages and of the practical affairs of life. If, however, you cannot dissuade him, the next question I ask is, is he a man of strong physical vigor?

Successful lawyers are hard-working machines, and unless they have a good physical constitution they will fail of eminent success. No lawyer can succeed, or long succeed, unless he has also the requisite moral qualities.

Integrity in the broadest sense, as well as in the most delicate sense of the term, is an indispensable condition to success in the law. Intellectual qualifications, fitness and integrity will not alone insure success. The successful lawyer must also have industrious habits. The successful lawyer is the lawyer who works and toils. He must have a genius for work. These are fundamental conditions. But all these may exist and yet fail to bring any marked success, because success comes from a happy combination of physical and intellectual qualities, including will, power of decision, moral qualities, integrity and saving common sense, so that the advice which the lawyer gives shall be seen to be wise; that is, the advice he gives shall be practically demonstrated to be wise, as shown in the results. The modern client wants good results.

LEGAL DEFINITION OF "DRUNKENNESS."

The newspapers have indulged in a great deal of merriment over a distinction between drunkenness and sobriety laid down a short time ago by one of the judges of the Boston municipal court. It appeared that the defendant, on the night of his arrest, had smelled strongly of liquor; had staggered; had interfered with the proceedings of a political caucus at which he was present by using profane and abusive language, and by roughly elbowing other attendants at the meeting; had called policemen "lobsters" and had generally conducted himself improperly. In disposing of the case Judge Dewey said: "I have never been called upon to make a ruling upon such a case. This is the proposition before me, leaving out the matter of aggravation. The only material testimony upon the part of the government as tending to show the defendant guilty of the crime of drunkenness was that he staggered and that his breath smelled of liquor; that he appeared excited, used indecent and profane language, and that his face was flushed. Leaving out the part relating to the flushed face, and the profane and indecent language, the case in the rough brings up the proposition of his breath smelling of liquor and that he staggered. Now, whether that is sufficient evidence to constitute the crime of drunkenness, only one state in the Union, Alabama, has attempted to define. The Century Dictionary defines the word—leaving out the synonyms—inebriated, overcome or frenzied by alcoholic liquor. The Law Dictionary gives it as being affected by strong drink. I think that when the law makes it a criminal offense for a man to be in a state of drunkenness it means more than that which is found in the Law Dictionary. Most any man's mind is affected by a single drink, a single glass of liquor. It is preposterous to hold that the legislature intended it in that sense. In my practice in the courts I have used the definition found in the Century Dictionary—overcome, stupefied or frenzied by alcoholic liquor. There is a great difference in men when they have used such liquor. One man's mind will be clear and his legs unmanageable. Another man's mind will be stupefied, and he will be able to walk at any time. The definition in the Century Dictionary, in my opinion, is a good, fair meaning of drunk under the law. I shall apply it to this case, and probably continue to do so until I get a better one. In the testimony of this case I am unable to find that the defendant was either overcome, stupefied or frenzied by having drunk alcoholic liquor. I order him discharged."

AMENDING THE BANKRUPTCY LAW.

Now, that the time for convening the national legislature is approaching suggestions as to the desirability of legislation along certain lines are beginning to find expression. As might be expected, some of those suggestions have reference to the national bankruptcy law which has been on the statute book now for something over three years. We do not think that the repeal of the law is as often recommended nowadays as it was a year or two ago. The commercial community has by long experience learned to appreciate the importance of a national law under which there will be a uniformity of treatment of both debtor and creditor, and may be counted upon, we think, to oppose a return to the chaotic system of state insolvency legislation. There is, however, a growing feeling that in certain particulars the law stands in need of amendment, and the advocates of a national bankruptcy law are showing wisdom in taking serious and not unsympathetic account of criticisms of certain of its provisions.

One of the provisions of the law that has been most seriously criticised is that in section 57g, providing

that the claims of creditors of a bankrupt who have received preferences shall not be allowed unless they surrender their preferences. This provision was variously interpreted, but the Supreme Court of the United States held, in the case of Pirie v. Chicago Title & Trust Company, that a creditor who has actually received a preference by a partial payment of his debt within four months before the bankruptcy of his debtor, cannot have his claim allowed against the estate of the bankrupt without surrendering the preference, and this, notwithstanding the fact that he received the payment innocently, and that he had no knowledge or cause to believe that the debtor was insolvent or that a preference was intended. The provision of the law in question, as thus interpreted, has met with widespread criticism among merchants, and there can be no doubt that congress will, at its next session, be asked to amend it.

Just what form the proposed amendment will take cannot be determined just now. There seems to be much reason in favor of a proposal recommended by former Assistant Attorney General Brandenburg, and by the American Bar Association. This is, that the law be so amended as to provide that payments made on account, when innocently received by the creditor, should not operate to exclude him entirely from proving his claim for any balance of the debt remaining due, but that he should not be allowed to prove such balance until all the creditors who had not received any payments on account were paid a dividend equal *pro rata* to the amount of the payment so received, and that after that equalization had been had the balance of assets should be divided among all the creditors. It is worthy of notice that this amendment has received the indorsement of some of those best qualified to judge of its desirability, such, for example, as Mr. Morris S. Wise, the chairman of the National Association of Referees in Bankruptcy. At the meeting of the Philadelphia Credit Men's Association this week Mr. Wise declared that in his opinion such an amendment would be a perfectly fair, just and satisfactory compromise, and would rid the whole situation of all disturbance, and would result in securing a uniform administration of the bankruptcy law.

Another needed amendment is one giving the United States courts jurisdiction in actions brought by trustees in bankruptcy to set aside fraudulent conveyances. At present such jurisdiction can only be obtained in case the defendant consents. It need scarcely be said that under certain circumstances the operation of this provision results in a denial of justice. This situation certainly stands in need of a remedy, and one should be applied at the next session of congress. In urging amendments, however, care should be taken that the central features of the law, those which distinguish it from the chaos of conflicting state statutes, be left undisturbed. It is the part of wisdom to hold fast to these, but perhaps it will be more easy to retain them if careful heed is paid to criticisms which touch matters of substantial grievance.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

1. ADVERSE POSSESSION—Occupation in Subordination to Plaintiff's Ancestor.—No right was acquired by defendant by an occupation commenced in subordination to the title of plaintiff's ancestor and never shown to have assumed an adverse character.—Smith v. Cunningham, Miss., 30 South. Rep. 652.

2. APPEAL AND ERROR—Appeal in Vacation.—To give the supreme court jurisdiction of an appeal taken in vacation, the assignment of errors must contain the full names of all parties affected by the judgment.—Smith v. Fairfield, Ind., 61 N. E. Rep. 560.

3. APPEAL AND ERROR—Referee's Report.—Errors in referee's report will not be reviewed when not pointed out below.—Neher v. Armijo, N. Mex., 66 Pac. Rep. 517.

4. APPEAL AND ERROR—Second Writ of Error.—Decision on first writ of error on all points actually determined held the law of the case, which will not be reviewed on second writ of error.—United States v. Denver & R. G. R. Co., N. Mex., 66 Pac. Rep. 550.

5. APPEAL AND ERROR—Substantial Rights.—Judgment will be affirmed on appeal, unless substantial rights of successful party were injuriously affected by the errors committed.—Mauch v. City of Hartford, Wis., 87 N. W. Rep. 816.

6. APPEAL AND ERROR—Sufficiently Ample Instructions.—Failure to give sufficiently ample instructions is not error, where no further instructions are requested.—Moore v. Brown, Tex., 64 S. W. Rep. 946.

7. APPEAL AND ERROR—What Papers are Part of Record.—Only such papers are a part of the record to be considered on appeal as are designated in the præcipe to the clerk to be put in the transcript.—Schaeffer v. Rominger, Ind., 61 N. E. Rep. 605.

8. ASSAULT AND BATTERY—Arrest as a Defense.—In trial for an assault in making arrest, held that defendant might use such force as reasonably appeared necessary.—Gillespie v. State, Ark., 64 S. W. Rep. 947.

9. ATTORNEY AND CLIENT—Failure to Account for Money.—Failure to notify client of collection of money, or neglect to immediately pay it over, held not a ground of disbarment, in the absence of fraud or deceit.—*In re* Veeder, N. Mex., 66 Pac. Rep. 545.

10. BANKS AND BANKING—Liability of Directors for Taking Notes in Payments of Subscriptions.—Bank directors, taking notes, judgments, etc., in payment of subscriptions to stock, must show them to be of the value for which taken in order to escape liability.—Coddington v. Canaday, Ind., 61 N. E. Rep. 567.

11. BUILDING AND LOAN ASSOCIATION—Credit of Dues.—In an action by the assignee to recover a loan made to a stockholder, defendant was not entitled to credit by payments made as dues upon stock.—United States Building & Loan Assn's Assignee v. Green, Ky., 64 S. W. Rep. 962.

12. CERTIORARI—Quashing Writ.—On return to common-law writ of *certiorari*, the court must give judg-

ment on the record of the challenged proceedings as it appears thereby on the merits or by quashing the writ.—State v. Thorne, Wis., 87 N. W. Rep. 797.

13. COLLEGES AND UNIVERSITIES—Income from Sale of Land Granted by United States.—The income derived from a lease of land before its sale, granted by the United States to the state agricultural college, held available for the support of the institution.—State v. Barrett, Mont., 66 Pac. Rep. 504.

14. CONSPIRACY—Discharge of Third Person from Employment.—The fact that defendant, pursuant to a conspiracy, procured plaintiff's discharge from employment, gives plaintiff no right of action; no coercion or deception being used.—Baker v. Sun Life Ins. Co. of America, Ky., 64 S. W. Rep. 967.

15. CONTEMPT—Inherent Power to Punish.—The power to compel obedience to the law and to process and authority of the court, and to imprison for contempt thereof, is inherent in the courts.—Smith v. Speed, Okla., 66 Pac. Rep. 511.

16. CONTRACTS—Proving Circulation in Advertising Contracts.—Contract to take certain advertising space in plaintiff's publication construed, and held, that plaintiff was not entitled to recover without proving the circulation as stated in his guaranty.—Mooney v. United States Industrial Pub. Co., Ind., 61 N. E. Rep. 607.

17. CONVERSION—Fund Arising from Sale of Land.—Where land is sold under the statute authorizing the sale of land limited over to infants, the fund arising from such a sale is to be regarded as real estate.—Merrian v. Dunham, N. J., 50 Atl. Rep. 235.

18. CORPORATIONS—Knowlege of President Imputed to Corporation.—The knowledge of the president of the corporation that it is insolvent is imputable to the corporation.—Reagan v. First Nat. Bank, Ind., 61 N. E. Rep. 575.

19. COUNTIES—Compensation of County Clerk.—Under Batts' Dig. arts. 2495c-2495e, county clerk should be charged with fees collected and credited with salary allowed and sums paid his deputies, and also one-fourth of the difference between such charge and credit.—Ellis County v. Thompson, Tex., 64 S. W. Rep. 927.

20. COUNTIES—Liability for Costs Incured by Another County in Suit Transferred from Former.—Under Burns' Rev. St. 1901, § 418, a county from which a civil action is transferred must reimburse the county to which the cause is changed for salaries of the clerk, sheriff, and bailiffs in attendance during the time the court is occupied with such cause.—Board of Comrs. of Randolph County v. Board of Comrs. of Henry County, Ind., 61 N. E. Rep. 612.

21. COURTS—Advice of Supreme Court Should be Followed.—What is said by the supreme court in an advisory way as to procedure in trial courts should be followed.—Mauch v. City of Hartford, Wis., 87 N. W. Rep. 816.

22. COURTS—Jurisdiction of District Courts.—Under the amended judiciary article of the constitution, the district court had no jurisdiction of an action to enjoin the collection of a tax of $300.—Delling v. Waddell, Tex., 64 S. W. Rep. 945.

23. COVENANTS—Construction by Implication.—Under Rev. St. 1898, § 2204, a deed which grants defendant a mill lot, conditioned that plaintiff make one-third of all necessary repairs on the race, held not to covenant that the grantors should make the other two-thirds.—Koch v. Hustis, Wis., 87 N. W. Rep. 834.

24. COVENANTS—Implied Covenants.—Where plaintiff contracted with defendant for the purchase of land, and in the time between the making of the contract and the execution of the deed defendant conveyed a water right appurtenant to the land to another, he is liable to plaintiff for the value thereof.—Lyles v. Perrin, Cal., 66 Pac. Rep. 472.

25. CRIMINAL EVIDENCE—Good Character.—Though accused had testified for himself, yet, as he had presented no issue as to his general character as a peaceable citizen, the prosecution had no right to show that his reputation in that particular was bad.—Calhoon v. Commonwealth, Ky., 64 S. W. Rep. 965.

26. CRIMINAL EVIDENCE—Good Character.—Defendant's good character cannot be by proved specific acts.—State v. Briscoe, Del., 50 Atl. Rep. 271.

27. CRIMINAL EVIDENCE—Original Evidence in Rebuttal.—In trial for homicide, it was discretionary with the court to permit the state to introduce original evidence in rebuttal after the close of defendant's testimony.—Blair v. State, Ark., 63 S. W. Rep. 948.

28. CRIMINAL EVIDENCE—Parol Evidence of Dying Declarations.—Parol evidence of the dying declarations of the deceased held admissible, though a written statement of such declarations had been signed by the deceased.—Hopkins v. State, Tex., 64 S. W. Rep. 933.

29. CRIMINAL LAW—Plea in Abatement after Continuance.—Where, on a criminal prosecution, the defendant appeared and secured a continuance, a demurrer to a plea in abatement thereafter filed was properly sustained.—Davids v. People, Ill., 61 N. E. Rep. 537.

30. CRIMINAL LAW—Res Adjudicata.—A trial for assault is not a bar to trial for the offense of injuring a person by aiming and discharging firearms, as described in Code, § 969.—Richardson v. State, Miss., 30 South. Rep. 650.

31. CRIMINAL TRIAL—Plea of Guilty of Accomplice.—It is not prejudicial to allow an accomplice who testified against defendant to enter plea of guilty.—Commonwealth v. Biddle, Pa., 50 Atl. Rep. 262.

32. CUSTOMS AND USAGES—Delivery of Railroad Cars.—In an action by a railroad employee against another railroad for injuries alleged to result from the condition in which defendant left a track and switch in the employer's freight yard, plaintiff could show a general custom as to the delivery of cars in a foreign yard.—Chicago & A. R. Co. v. Harrington, Ill., 61 N. E. Rep. 622.

33. DAMAGES—After Acceptance.—Plaintiff, in an action for damage to pop corn caused by negligent shelling, held entitled to recover, though he accepted the corn without objection after being shelled, and could have discovered the injuries by inspection.—Chase v. Blodgett Milling Co., Wis., 87 N. W. Rep. 826.

34. DAMAGES—Speculative Profits.—On a counterclaim in an action for goods sold, held, that speculative profits on probable sales cannot be considered to have been in contemplation of the parties.—Acme Cycle Co. v. Clark, Ind., 61 N. E. Rep. 561.

35. DEAD BODIES—Objections to Removal.—On application to remove body from lot in cemetery owned by a lodge to family lot in same cemetery, objections that the rules of the lodge forbade such removal, as did also a religious belief of deceased, will be overruled.—*In re* Bauer, N. Y., 72 N. Y. Supp. 439.

36. DEMURRER—Demurrer to Answer Where Complaint is Bad.—Where a complaint is demurrable, it is not error to overrule a demurrer to the answer, even if the answer is bad.—Repp v. Lesher, Ind., 61 N. E. Rep. 609.

37. DISMISSAL AND NONSUIT—Finding of Facts—Trial.—Under Rev. St. 1898, § 2863, held error for the court to grant a nonsuit without making a finding of facts in a case tried by it.—Bariass v. Kargus, Wis., 87 N. W. Rep. 800.

38. DISMISSAL AND NONSUIT—May be Vacated.—The court retains jurisdiction on entry of judgment of dismissal, so as to vacate the same on a proper showing.—Palace Hardware Co. v. Smith, Cal., 66 Pac. Rep. 474.

39. DOWER—Not Allotted Does Not Vest in Husband.

—A widow's dower, not alloted, does not vest in her second husband.—Smith v. Cunningham, Miss., 30 South. Rep. 652.

40. DRAINS — Powers of Sanitary District.—Under Hurd's Rev. St. 1899, p. 327, §§ 7, 17, 20, 23, 27, held, that the sanitary district of Chicago had power to widen and deepen the Chicago river.—Lussem v. Sanitary Dist. of Chicago, Ill., 61 N. E. Rep. 544.

41. EJECTMENT—Affidavit as to Existence of Record. —In ejectment, a certificate of a proper officer that certain records did not exist held admissible.—Wilson v. Marvin-Rulofson Co., Pa., 50 Atl. Rep. 225.

42. ELECTION—Voting Machines.—Under Pub. Laws 1900, ch. 744, § 1, and Pub. Laws 1901, ch. 859, § 5, held, that a town, after having adopted the voting machine, cannot change the method to that in use prior to its adoption.—*In re* Voting Machines, R. I., 50 Atl. Rep. 265.

43. EMINENT DOMAIN—Interest and Costs.—Under Code Civ. Proc. §§ 1251, 1253, interest cannot be allowed on the award in condemnation proceeding, nor payment of costs required.—San Francisco & S. J. Val. Ry. Co. v. Leviston, Cal., 66 Pac. Rep. 473.

44. EQUITY—Laches and Limitations.—In an equitable action, limitations do not necessarily govern as to laches.—Patterson v. Hewitt, N. Mex., 66 Pac. Rep. 552.

45. EQUITY—Reference to Master.—In equity, the court cannot refer issues to a master to report findings of fact and conclusions of law, except on consent.—Early Times Distillery Co. v. Zeiger, N. Mex., 66 Pac. Rep. 532.

46. EVIDENCE—Judicial Notice of Corporation Charter.—The court will take judicial notice of a legislative change in the charter of a corporation.—Davey v. City of Janesville, Wis., 87 N. W. Rep. 818.

47. EXCEPTIONS, BILL OF—Requisites of Filing.— Where a bill of exceptions was filed by the court stenographer before the judge signed it, such filing is not sufficient.—Acme Cycle Co. v. Clark, Ind., 61 N. E. Rep. 561.

48. EXECUTION—Life Estate Devested by Prior Sale. —A writ to sell alleged life estate in land should not be granted, where the debtor's entire interest was devested by a prior execution sale,—Kreamer v. Shroeder, Pa., 50 Atl. Rep. 233.

49. EXECUTORS AND ADMINISTRATORS — Action Against.—In action against one individually and as executor, held error to render judgment against him as executor.—Saperstein v. Ullman, N. Y., 61 N. E. Rep. 553.

50. EXECUTORS AND ADMINISTRATORS—Distribution When an Appeal is Pending.—Where there was an appeal pending from an unexecuted order of the court to the administrator to sell certain land to pay debts, it was error to order distribution of the property on application by the widow.—*In re* Freud's Estate, Cal., 66 Pac. Rep. 476.

51. FRAUDS, STATUTE OF—Contract for Future Services.—An oral contract for one year's services, commencing at a future time, held void under Rev. St. 1898, § 2307.—Draheim v. Evison, Wis., 87 N. W. Rep. 795.

52. FRAUDS, STATUTE OF—Parol Agreement as to Boundary—Parol agreement to disregard boundary line fixed by deed held void under Civ. Code, § 1091.— Nathan v. Dierssen, Cal., 66 Pac. Rep. 485.

53. FRAUDULENT CONVEYANCES—Estoppel.—By accepting a mortgage, fraudulent because of an attempted preference of stockholders by the corporation, the beneficiaries thereunder assumed a contractual relation which deprived them of the power to assail the claims of such stockholders on the ground of fraud.—Reagan v. First Nat. Bank, Ind., 61 N. E. Rep. 575.

54. FRAUDULENT CONVEYANCES—Intent.—Fraudulent intent must be shown to invalidate a voluntary conveyance.—Whitehouse v. Bolster, Me., 50 Atl. Rep. 240.

55. GARNISHMENT—Contingent Deposits.—Money deposited in bank, to be paid defendant on certain contingencies, held not subject to garnishment.—Becker v. Becker, Wis., 87 N. W. Rep. 880.

56. GRAND JURY—Indictment by Special Counsel.— Where indictments before the grand jury are obtained at the instance of special counsel to the district attorney, who was present before the grand jury, they will be set aside.—People v. Scannell, N. Y., 72 N. Y. Supp. 449.

57. HOMESTEAD—Declaration as to "Actual Cash Value."—Under the statute requiring a declaration of homestead to contain a statement of the "actual cash value" of the premises, held error to allow complaint stating the "cost value" of the premises to be amended by giving the "cash value" without notice to defendant.—Tappendorff v. Moranda, Cal., 66 Pac. Rep. 491.

58. HOMICIDE—Apprehension of Danger.—On a prosecution for assault with intent to kill, held error to have refused a cross-examination of the prosecuting witness as to facts which tended to show accused's apprehension of danger at the time of the assault.— Davids v. People, Ill., 61 N. E. Rep. 587.

59. HOMICIDE—Defendant not Questioned Why Sentence should not be Passed.—In a capital case, where record does not affirmatively show that inquiry was made of defendant why sentence should not be passed, the judgment will be reversed as to the sentence, leaving the verdict and all other proceedings in full force.—Territory v. Herrera, N. Mex., 66 Pac. Rep. 523.

60. HOMICIDE—Evidence of Killing.—On trial for murder, evidence that at the time of the arrest accused killed one of the officers making the arrest held admissible.—Commonwealth v. Biddle, Pa., 50 Atl. Rep. 264.

61. HOMICIDE—Instruction as to Degrees.—Where the evidence is circumstantial, the court can charge as to second or such other degree as the evidence tends to establish.—Territory v. Guillen, N. Mex., 66 Pac. Rep. 527.

62. HOMICIDE—Instruction as to Manslaughter.—On a trial for murder, held, that the court should instruct explicitly that a verdict for manslaughter may be returned, where the evidence tends to show manslaughter as well as murder. — State v. Shadwell, Mont., 66 Pac. Rep. 508.

63. HUSBAND AND WIFE — Security or Payment of Husband's Debts by Married Woman.—Disposition by a married woman of her separate property as security for or in payment of her husband's debt held valid.— Fitzgerald v. Dunn., Wis., 87 N. W. Rep. 803.

64. INDICTMENT AND INFORMATION—Degrees of Murder and Manslaughter.—Indictment for Murder in the first degree likewise charges murder in every other degree and manslaughter. — Green v. State, Fla., 30 South. Rep. 656.

65. INFANTS—Malice in Child Over Seven. — Defendant, an infant over seven years of age, may from the facts be bound to have a malicious intent in setting fire to a barn. — State v. Jackson, Del., 50 Atl. Rep. 270.

66 JUDGES—In Chambers. — Judges, when sitting in chambers, have the same power as to business to be brought before them as when sitting in open court.— Smith v. Speed, Okla., 66 Pac. Rep. 511.

67. JUDGMENT—Res Adjudicata.—Judgment in ejectment for rents and profits and possession held not a bar to a suit for rents and profits anterior to the time covered by such judgment. — Neher v. Armijo, N. Mex., 66 Pac. Rep. 517.

68. JUDGMENT—Res Adjudicata.—Where it was contended that questions involved had been decided in a

former suit on appeal to the supreme court, held proper to introduce the opinion of such court in evidence.—Town of Fulton v. Pomeroy, Wis., 87 N. W. Rep. 831.

69. JURY— Qualification and Selection.—In an action against a city, it was permissible to ask a juror whether the fact that he might be called on as a taxpayer to pay a part of the judgment would influence his verdict.—Davey v. City of Janesville, Wis., 87 N. W. Rep. 813.

70. JUSTICE OF THE PEACE — Action by Consent. — Under Rev. St. 1898, § 3626, subd. 11, justice held not to have lost jurisdiction by an adjournment by consent because of amendment after witness was sworn. — State v. Daubner, Wis., 87 N. W. Rep. 802.

71. LARCENY — Allegation of Venue. — Under Pen. Code, § 786, an indictment in a county into which stolen goods are taken by the thief need not allege the commission of a crime in that county.—People v. Prather, Cal., 66 Pac. Rep. 483.

72. LARCENY—Recently Stolen Property.— The burden is on one having possession of recently stolen property to show that he was not the thief.— State v. Briscoe, Del., 50 Atl. Rep. 271.

73. LIMITATION OF ACTIONS — Accrual of Action for Malicious Prosecution. — The right to sue for malicious prosecution will not accrue till the wrongful action shall have been determined.— Luby v. Bennett, Wis., 87 N. W. Rep. 804.

74. LIMITATION OF ACTIONS.— Running Accounts.— Action for the whole amount due on a book account is not barred until the statutory period after the latest item.—Carpenter v. Plagge, Ill., 61 N. E. Rep. 580.

75. MARRIAGE—Proof of Marriage After Meretricious Union. — It will be presumed that a cohabitation meretricious in its inception continues meretricious, but the fact that the evil intent of the parties subsequently changed and became matrimonial in character may be shown by direct or circumstantial proof. —Robinson v. Ruprecht, Ill., 61 N. E. Rep. 631.

76. MASTER AND SERVANT— Fellow-Servants. — In an action by a railroad employee against another railroad for personal injuries, the negligence of a fellow-servant, contributing with defendant's negligence to produce the injuries, was no defense.—Chicago & A. R. Co. v. Harrington, Ill., 61 N. E. Rep. 622.

77. MINES AND MINING — Failure to Give Proper Support to Surface. — Grantee of surface may recover for injury thereto for failure of mine operator to leave proper supports, though such failure occurs before his deed.—Noonan v. Pardee. Pa., 50 Atl. Rep. 255.

78. MORTGAGE—Acceptance of Trustee.—Acceptance of a mortgage by a trustee appointed by the mortgagor is not an acceptance by the beneficiaries.— Reagan v. First Nat. Bank, Ind., 61 N. E. Rep. 575.

79. MUNICIPAL CORPORATIONS— Irregularity in Street Assessment Proceeding.—Under a suit for the enforcement of a street assessment held that the burden was on defendant to prove any irregularity in the proceedings subsequent to the ordering of the work.— Belser v. Allman, Colo., 66 Pac. Rep. 492.

80. MUNICIPAL CORPORATIONS— Liability for Not Accepting Lowest Bid for Street Improvements.—Where a city canceled an advantageous contract for a street improvement and made another contract increasing the cost, the amount of such increase adjudged to property owners as damages against the city should bear interest from the date of the judgment against them in favor of the contractor.— Barfield v. Gleason, Ky., 64 S. W. Rep. 959.

81. MUNICIPAL CORPORATIONS — Liability for Proper Sewer Construction.—When a city undertakes to construct a sewer, it is its duty to exercise ordinary care to keep it in condition to carry off the water collected thereby from such rainfalls as may be reasonably expected to occur.—City of Louisville v. Norris, Ky., 64 S. W. Rep. 958.

82. MUNICIPAL CORPORATIONS—Licensing Street Vendors.—Ordinance permitting licensed vendors to stand with their wagons in a street and sell held invalid.— *In re* Fiegle, N. Y., 72 N. Y. Sup. 488.

83. MUNICIPAL CORPORATIONS—Ordinance Forbidding Public Addresses.— An ordinance forbidding public addresses in a public place within the half mile circle from the city hall was a valid exercise of the power conferred by Detroit City Charter 1893, ch. 7, § 34.— Love v. Phalen, Mich., 87 N. W. Rep. 785.

84. MUNICIPAL CORPORATIONS —Widening Street by Consent.—An ordinance passed on the request of certain abutting owners, changing the width of a street from 25 to 40 feet, held binding on those who consented.—Grace v. Walker, Tex., 64 S. W. Rep. 930.

85. NEGLIGENCE—Evidence as to Proper Repair of Machinery.—In an action for personal injuries, expert evidence held admissible on the issue of whether the safety valve of a boiler had been negligently and unskillfully repaired.—Beunk v. Valley City Desk Co., Mich., 87 N. W. Rep. 798.

86. NEGLIGENCE—Negligence of Fellow-Servant.—In an action by a railroad employee against another road for personal injuries, the question whether or not the negligence of plaintiff's fellow-servant was the proximate cause of the injury was for the jury, and not the court. — Chicago & A. R. Co. v. Harrington, Ill., 61 N. E. Rep. 622.

87. PLEADING— Variance. — Under the direct provisions of Code Civ. Proc. § 469, a variance between the complaint and the proof which is not prejudicial to the defendant will be disregarded. — Lyles v. Ferrin, Cal., 66 Pac. Rep. 472.

88. PRINCIPAL AND SURETY— Creditor of Co-Surety.— A surety on a bond becomes creditor of co-surety when he signs it.—Whitehouse v. Bolster, Me., 50 Atl. Rep. 240.

89. PUBLIC LANDS—Failure to Furnish Plot and Certificate.—Plaintiff held not entitled to recover damages of defendant as county surveyor for failing to furnish him a plot and certificate of survey of land.— Potter v. Lewis, Ky., 64 S. W. Rep. 958.

90. QUIETING TITLE — Unknown Parties Residents of State.—In action to determine adverse claims, that an unknown party was a resident of the state held not to affect the jurisdiction of the court.— McClymond v. Noble, Minn., 87 N. W. Rep. 838.

91. RAILROADS—Negligence of Connecting Carrier.— Negligence of connecting carrier in receiving and using the car held not to relieve first carrier from liability for injuries to servants of the latter by defects in such car.—Teal v. American Min. Co., Minn., 87 N. W. Rep. 837.

92. RECEIVERS— Appointment and Qualification. — Appointment of receiver held complete when order is entered; and bond dates back to time of appointment.—*In re* Hoagland, N. Y., 72 N. Y., Sup. 485.

93. RECEIVERS—Appointment on Ex Parte Petition. —A court is without jurisdiction to appoint a receiver to take charge of an insolvent corporation upon the *ex parte* petition of the stockholders.—Smith v. Ely & Walker Dry Goods Co., Miss., 30 South. Rep. 668.

94. REPLEVIN—Ownership.—Where plaintiff alleged that she was the owner and entitled to the possession of one cow, a verdict that plaintiff was entitled to possession was insufficient, because not finding the ownership.—Feller v. Feller, Oreg., 66 Pac. Rep. 468.

95. REPLEVIN — Ownership. — Where sheep are replevied, bills of sale or copy of recorded brand held competent evidence of ownership. — Gale v. Salas, N. Mex., 66 Pac. Rep. 520.

96. STATES—Rescinding Contract Because of Hostility to Labor Organizations.— Action of state furnishing board in attempting to rescind contract for the furnishing of supplies, because contractor was shown to be hostile to labor organizations, held void. — State v. Toole, Mont., 66 Pac. Rep. 496.

97. STATUTES—One Subject in Title. — The constitutional provision that no law shall embrace more than one subject, to be expressed in its title, must be liberally construed.—Ek v. St. Paul Permanent Loan Co., Minn., 87 N. W. Rep. 844.

98. STATUTES— Re-enactment of Whole Code. — The act (St. 1901, p. 117) entitled "An act to revise the Code of Civil Procedure of the State of California," etc., does not re-enact and publish the whole Code, and is void under Const. art. 4, § 24.—Lewis v. Dunne, Cal., 66 Pac. Rep. 478.

99. STREET RAILROADS— Child on Platform.— Street car company held negligent in failing to remove child from platform of a moving car.—Levin v. Second Ave. Traction Co., Pa., 50 Atl. Rep. 225.

100. TAXATION—Limitation on Legislative Power.— The power of the legislature is supreme in electing objects for taxation and determining the amount of taxes, subject to the limitation that they should be uniformly imposed only for public purposes, and in devising the machinery for assessing taxable property.—State v. Thorne, Wis., 87 N. W. Rep. 797.

101. TAXATION—Limitations on Suit to Recover Taxes Wrongfully Collected. — An agreement by which money due, to enjoin the collection of which a suit was pending, was paid under protest, held not to affect the running of limitations against the right to recover the money so paid.—City of Dallas v. Kruegel, Tex., 64 S. W. Rep. 922.

102. TENANCY IN COMMON—Improvements.—A tenant in common cannot recover for improvements by predecessor intitle without accounting to his co-tenant for rents and profits received.— Neher v. Armijo, N. Mex., 66 Pac. Rep. 517.

103 TENDER— Qualified Tender no Defense.—Qualified tender of possession held no defense in an action to recover property transferred in violation of the insolvent law.— Perkins v. Maier & Zobelein Brewery, Cal., 66 Pac. Rep. 482.

104. TRIAL— Misconduct of Jury. — Misconduct of a juror is waived, where the appellant's counsel had knowledge of the same before the verdict, and did not present objections thereto until after the verdict was returned.—Ellis v. City of Hammond, Ind., 61 N. E. Rep. 565.

105. TRIAL—Refusing Interrogatories.—A trial court may refuse interrogatories offered by a party to be submitted to the jury for special findings, and substitute others on its own motion.— Chicago & A. R. Co. v. Harrington, Ill., 61 N. E. Rep. 622.

106. TRIAL—Special and General Verdicts. — Where a special verdict is taken, it is error to make any general finding as to the right of the plaintiff or defendant.—Mauch v. City of Hartford, Wis., 87 N. W. Rep. 816.

107. TROVER AND CONVERSION—Pleading and Proving Ownership.—Defendant in conversion held entitled to prove ownership of the property under mortgage without specially pleading the same.—Crane v. McGuire, Tex., 64 S. W. Rep. 942.

108. TRUSTS—Purchasing Land With Wife's Money.— Under Burns' Rev. St. 1894, §§ 3396, 3398, an averment that a husband purchased land with money belonging to his wife, taking title in himself, held not an allegation that the title was taken in trust.—Repp v. Lester, Ind., 61 N. E. Rep. 609.

109. VENDOR AND PURCHASER—Further Payments.— Where vendor conveys property to another than vendee, the latter does not forfeit contract by failing to make further payments.—Brodhead V. Reinbold, Pa., 50 Atl. Rep. 229.

110. VENDOR AND PURCHASER—Lien of Vendor Where Note Received in Payment is Forged.—Where a vendor accepted as part payment a note purporting to have been executed to the purchaser by his mother, since deceased, and the note turned out to be a forgery, the vendor was entitled to recover the amount thereof from the purchaser and to a lien on the land therefor. —Justice v. Phillips, Ky., 64 S. W. Rep. 963.

111. VENDOR AND PURCHASER—Tender of Payment Required. — Vendee, having paid part of the price under an oral agreement to convey on payment of the remainder, held not entitled to recover amount paid without tendering the amount due.—Laffey v. Kaufman, Cal., 66 Pac. Rep. 471.

112. VENUE—Change of Judge Pending Motion.— Where another judge is called in to try the case after a petition for change of venue on account of alleged prejudice of the judge, no error can be based on the refusal of the petition.—Chicago & A. R. Co. v. Harrington, Ill., 61 N. E. Rep. 622.

113. VERDICT—Acceptance by Court of General Verdict Where it Ordered a Special.—Where the court submits questions to the jury, and it returns a general verdict, which the judge accepts, it is the same as if the court had refused to submit the questions in the first instance.—Robinson v. Palatine Ins. Co., N. Mex., 66 Pac. Rep. 535.

114. WATER AND WATER COURSES—Municipal Water Works.—Where a water company incorporated under Act April 29, 1874, has constructed its works and contracted to supply borough, the latter cannot build works of its own.—Troy Water Co. v. Burough of Troy, Pa., 50 Atl. Rep. 259.

115. WILLS—Advancements.—Payments under marriage settlement held not to raise presumption that sum secured by marriage settlement was to be deducted as an advancement from a daughter's share in the residuary estate of her father.—Miller v. Coudert, N. Y., 71 N. Y. Sup. 441.

116. WILLS—Devise Without Restriction on Use, With Limitation Over.—Where real estate is devised to testator's wife without restriction, she takes the fee, and a devise of the same land to his daughters "at the death of his wife" held void for repugnancy.—Fenstermaker v. Holman, Ind., 61 N. E. Rep. 599.

117. WILLS — Devise With Power of Disposition.— Where by will real estate is given to a person generally, with a power of disposition, the person takes an estate in fee, and any limitation over is void for repugnancy.—Hammond v. Croxton, Ind., 61 N. E. Rep. 596.

118. WILLS—Validity of Unrecorded Foreign Wills.— Foreign will, not recorded in Illinois, held ineffective under statute of wills, § 9, and section 33 of act concerning conveyances though received in evidence in partition proceedings.—Bliss v. Seeley, Ill., 61 N. E. Rep. 524.

119. WITNESSES — Contradicting Admissions of Deceased Person.—While defendant is not a competent witness for himself as to a transaction with a person since deceased, he is competent to contradict statements made by witnesses touching admissions claimed to have been made by him.—Justice v. Phillips, Ky., 64 S. W. Rep. 963.

120. WITNESSES—Election Cases an Exception to the Privilege of Witness not to Answer Incriminating Questions.—Declaration of Rights, § 10, providing that no one shall, in contested elections, withhold his testimony because tending to criminate himself, held not repugnant to section 9.—*In re* Kelly, Pa., 50 Atl. Rep. 248.

121. WITNESSES—Impeachment.—A witness cannot, for the purpose of impeachment, be asked if he has been arrested or indicted at any time for an offense.— Hendrickson v. Commonwealth, Ky., 64 S. W. Rep. 984.

122. WITNESSES—Testimony of Divorced Wife as to Contracting Venereal Disease.—In an action by a woman against her former husband, her testimony that she had contracted a venereal disease from him during the existence of marital relation held admissible.—King v. Sassaman, Tex., 64 S. W. Rep. 937.